127-489

AGREED RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 254.

ROBERT E. JENKINS, AS ASSIGNEE IN BANKRUPTCY OF SAMUEL J. WALKER, PLAINTIFF IN ERROR,

vs.

THE INTERNATIONAL BANK OF CHICAGO, BARTHOLD LOEWENTHAL, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

FILED JULY 24, 1885.

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IN THE

SUPREME COURT OF THE UNITED STATES,

NO. 254.

ROBERT E. JENKINS, ASSIGNEE, ETC., *Plaintiff.*	}	*In Error to*
vs.		
INTERNATIONAL BANK OF CHICAGO ET AL., *Defendants.*	}	*Supreme Court of Illinois.*

It is hereby stipulated and agreed between the parties to this suit:

That a writ of error was on inspection of a transcript of the record in the Supreme Court of Illinois in this cause, allowed by the Hon. John M. Harlan, Justice, who thereupon issued citation and approved bond for costs, as required by law, and that said citation was duly served, and defendants in error entered their appearance to this suit to the October term thereof, A. D. 1885, at which term the said transcript was duly filed.

That the papers hereto annexed and forming part hereof, viz:

A statement of the errors assigned by the plaintiff in error in this court, and

Those parts of the record which are by the parties deemed necessary for the consideration thereof, being the printed abstract of the record filed in the Supreme Court of Illinois, to which are attached copies of the errors assigned in that court, its opinion and judgment, shall be taken as the agreed record in the case in this court.

That the costs of printing the same for the use of this court in the case to be evidenced by the receipted bill of

the printing thereof, filed in the cause, shall be taxed among the costs of the cause, against the losing party therein.

Nov. 29, 1887.

W. T. BURGESS,
P'ff's Att'y.
ABRAM M. PENCE,
Att'y for Defts. in Error.

STATE OF ILLINOIS,
SUPREME COURT,
Northern Grand Division.

At a Supreme Court, begun and held at Ottawa, on Tuesday, the second day of September, in the year of our Lord one thousand eight hundred and eighty-four, within and for the Northern Grand Division of the State of Illinois.

Present:

Hon. JOHN SCHOLFIELD, *Chief Justice.*

PINKNEY H. WALKER, *Justice;* T. LYLE DICKEY, *Justice;* JOHN M. SCOTT, *Justice;* BENJ. R. SHELDON, *Justice;* JOHN H. MULKEY, *Justice;* ALFRED M. CRAIG, *Justice.*

JAMES MCCARTNEY, *Attorney General.*

W. R. MILLIGAN, *Sheriff.*

EVERELL F. DUTTON, *Clerk.*

Be it remembered, That afterwards, to wit, on the 17th day of November, A. D. 1884, the opinion of the court was filed in the clerk's office of said court, in words and figures following, to wit:

ROBERT E. JENKINS,
Assignee, etc.,
1085,
No. 27. vs.
THE INTERNATIONAL BANK OF CHICAGO ET AL.
Appeal from 1st District.

Opinion by SHELDON, J.

It is insisted the Circuit Court erred in holding the former adjudication in the Wilshire suit a bar to any further account as to what was in issue therein. The issues tendered by the bank to Walker, and by Walker to the bank, were precisely the same in that suit brought by Wilshire as they are in the case at bar.

The main object in each suit was and is to ascertain the amount due from Walker to the bank.

That was litigated and determined in the Wilshire suit, and we think the sum there found to be due must stand and be taken as the amount then due, without being subject to be overhauled in this present suit. As was said in *Briscoe* v. *Lloyd*, 64 Ill. 37, litigation must have a termination, and when a matter has been in issue, and the parties before the court, and an opportunity afforded to assert their rights, they must be held concluded from afterward litigating them in another proceeding. We do not understand appellant's counsel as making question that the decree in the Wilshire suit would not under the general rule be a bar to any further accounting, or be binding as to the amount due upon the principle of *res adjudicata*. But he seeks to avoid the effect of such former adjudication by the United States Statute of Limitation, and by the fact that the decree in the Wilshire suit is erroneous, and, as alleged, unjust and inequitable.

Section 5057 of the Revised Statutes of the United States provides that "No suit, either at law or in equity, shall be maintainable in any court between an assignee in bankruptcy and a person claiming an adverse interest, touching any property or rights of property transferable to or vested in such assignee, unless brought within two years from the time when the cause of action accrued for or against such assignee."

To make that statute applicable this view is presented that as the supplemental bill filed in this cause by the bank on Nov. 26, 1883, setting up the decree in the Wilshire suit, prayed that it might be taken as a bar to any further proceeding by Jenkins under his cross-bill herein, and also that it might be taken as a sufficient adjudication of the amount due the bank upon the evidence of indebtedness set out in the original bill, that the decree was used in the court below for a two-fold purpose: 1. As a plea in bar of the accounting. 2. As the cause of action in a supplemental bill taking the place of the cause of action set out in the original bill.

It is this latter purpose and the relief the party prays under it, which it is claimed entitles the assignee to set up in bar of that relief the statute. The decree in the Wilshire case having been rendered February 28, 1878, the deed to the assignee in bankruptcy made July 31, 1878, and the

said supplemental bill having been filed Nov. 26, 1883, it was more than two years thereafter.

We do not appreciate the distinction which would thus be taken in respect of a double purpose of the supplemental bill; one purpose, as a plea in bar of the accounting, in which regard appellant's counsel says he does not apply the statute to the decree as *res adjudicata*, but that to its other purpose, as a substantive cause of action, as it is claimed to be for the amount found due by the Wilshire decree, the Statute of Limitation does apply. Although the supplemental bill does in form set up the decree in the Wilshire suit in a double aspect, first, as in bar of the cross-bill of Walker and any further proceedings under it, and second, that such decree may be declared a sufficient adjudication of the amount due from Walker to the bank, there was no ground for any such distinction. The bill of the bank prayed for establishing the amount of indebtedness due the bank from Walker and an account would have had to have been taken under that, and Walker's answer setting up the payments of usurious interest. Walker's cross-bill did pray for an accounting, but the cross-bill was not needed for that; its only necessity was to obtain the affirmative relief of having surrender of the collaterals made to him. The barring of any further accounting would, necessarily, be to take the sum found by the Wilshire decree to be the amount due; and taking the Wilshire decree as fixing the amount due, would necessarily bar any further accounting previous thereto. We do not see any substantial distinction between the debarring of any further accounting, and the taking of the Wilshire decree as conclusive of the amount due. We see no two-fold purpose in reality, of the supplemental bill, but view it as having the single object of setting up the Wilshire decree as a former adjudication of the subject-matter of the present suit. We regard the supplemental bill as essentially in the nature of a plea in bar to any further accounting in this suit—that a party can not be called upon to account twice. It is analogous in operation to the plea of a former adjudication in bar of a pending suit upon the same subject. With respect to a matter of defense which arises after the cause is at issue, it is laid down that the defendant can not avail himself of the defense by plea or answer, but must make the same the subject of a cross-bill. Story Eq. Pl., Sec. 393. And so when the complainant in a bill would assert such matter of

defense to a cross-bill, the proper mode we take to be by a supplemental bill. The notes of Walker to the bank were introduced in evidence here, and there was no necessity of resort to the Wilshire decree as fixing the amount due the bank, the Wilshire decree being for just the amount of the notes. But it is said the notes were merged in the Wilshire decree, and no longer existed as a cause of action—that the only cause of action afterward was upon the decree, and all right had to be asserted upon it as the cause of action, and hence the necessity of a supplemental bill making the decree the cause of action, and that against that, as the cause of action, the statute has run. We do not consider the supplemental bill as introducing a new cause of action. The indebtedness is the same. The evidence of it at the time of filing the original bill in this case consisted in notes from Walker to the bank. The notes have since, as said, become merged in the Wilshire decree. There has been, then, a change in the evidence of the indebtedness, from notes to a decree upom them, that is all. The collaterals sought to be foreclosed by sale of them were pledged for the payment of the indebtedness. A decree upon the notes and the running of the Statute of Limitations against the decree is not any payment of the indebtedness. The simple effect is that the statute is a bar to a suit upon the decree. The collaterals may be held until the indebtedness is paid according to the terms of the pledge. We do not consider that there has been any new suit brought upon the decree, but that there is under the supplemental bill, but assertion of the right to claim the benefit of the Wilshire decree as *res adjudicata*, and that the Statute of Limitation set up is not a bar to that right.

It is next asserted that the Wilshire decree is erroneous, inequitable and unjust on its face, and under the circumstances of the case, one to which the Circuit Court should not have given effect.

There was error in the Wilshire decree. There was the same erroneous order of reference in that case directing the master not to consider the question of payments of usurious interest that there had been in this case, and for the same error on account of which the first final decree in this case of April 25, 1878, was reversed by this court, the decree in the Wilshire case was subject to be reversed, but it never was reversed.

The rule of *res adjudicata* or estoppel by a judgment upon

the same point, where there is no want of jurisdiction, has operation whether the judgment be erroneous or not.

Graceland Cem. Co. v. *The People*, 92 Ill. 619.
Case v. *Beauregard*, 101 U. S. 692.

It is insisted that the principle which was applied in the cases of *Wadhams* v. *Gay*, 73 Ill. 415, and *Gay* v. *Parpart*, 106 U. S. 699, as to a court of equity declining to interfere to supply aid for the enforcement of an unjust and inequitable decree should obtain here in appellant's favor. The principle there acted on was, that where there was an incomplete decree, which was ineffective for want of the provision of any means for its execution, and a court of equity was called upon by an original bill to supply the omission so as to render the decree effective, that the court might well remain passive and refuse its interposition where the decree was unjust and inequitable. Here the Wilshire decree is complete of itself, entirely capable of full execution. Nothing is sought with respect to it except to show its existence as a decree, and insist upon the legal effect which attaches to its existence as a decree. We do not regard the case as at all coming within the principle referred to.

There were pending at the same time some nine of these so-called Walker suits, including the present and the Wilshire suit, some brought by the International Bank, and in those brought by others the bank filed cross-bills, in which, as between Samuel J. Walker—he being a party defendant in all of the suits, to the bills or cross-bills of the bank—and the International Bank, a complainant in bills or cross-bills in all of them, where precisely the same questions were involved touching the same identical notes given in the course and springing out of the moneyed dealings between them, and where the principal question in each of them was, did Walker, by reason of those moneyed dealings, owe the bank anything, and if so, how much; usury in these dealings being the defense set up by Walker in all the suits.

In one of said suits, called the Brennock suit, there was a decree which, if he be overruled with respect to the Wilshire decree, appellant's counsel claims in favor of appellant as having determined the amount due to the bank from Walker on the notes to be ten thousand dollars and no more, and as this decree was the last finding upon the matters in controversy, it is insisted upon, on behalf of appellant, as being conclusive of the amount due from Walker to the bank.

That bill in the Brennock case was filed by the International Bank against John Brennock and others, the bill alleging that Walker *owed* the bank on a promissory note for $7,500, bearing date September 26, 1870, which was renewed by another note for the same amount, dated March 14. 1873. That to secure such indebtedness Walker, on September 26, 1870, pledged a note of $10,000, which was secured by a trust deed on block 15, etc. That the bank, after the payment of the principal note, was entitled to the surplus, not exceeding the amount due upon such collateral note, and to have it applied on the other indebtedness due the bank from Walker under its general collateral agreement, and alleged that Walker was indebted to the bank in an amount far exceeding the amount due upon said $10,000 collateral note, but the bill did not state the exact amount or set out the evidence of the other indebtedness due from Walker to the bank.

The bill also alleged that Brennock claimed title to said block 15, but that his interest was acquired subsequent to the pledge to the bank.

Brennock's answer showed that he acquired title January 1, 1872, to said land, and claimed that the security held by the bank would not be effectual for any indebtedness of Walker to the bank which was created subsequent to Brennock's purchase. Walker filed a cross-bill asking for an account. On the hearing Walker's cross-bill was dismissed for want of equity, and the court confirmed the report of the master, which report showed that on January 15, 1878, Walker owed the bank $172,474, which is the same that the Wilshire decree found. And then the decree makes the special finding "that there was due the bank on January, 1, 1872, and has been due it ever since from Samuel J. Walker, an amount of money exceeding the amount of $10,000, and that of the same identical indebtedness existing on January 1, 1872, for which the security aforesaid was pledged, that there is now due the sum of $8,532, and that complainant is entitled to have said premises above described sold and the proceeds applied in satisfaction of said indebtedness so due unto it on January 1, 1872."

It will thus be seen that the entire indebtedness of Walker to the bank was not in issue in that case. It was neither alleged in the bill nor sought by the bill to be established, nor did the decree assume to fix the entire indebtedness. The object sought was only to have established an amount

of indebtedness sufficient to absorb the collateral of $10,000, and that existing at a particular time, January 1, 1872, and so the bill only alleges an indebtedness in excess of $10,000, and the decree finds only an indebtedness to an amount exceeding $10,000 on January 1, 1872.

To take that decree as establishing conclusively the amount of the entire indebtedness of Walker to the bank, and that amount $10,000, as appellant's counsel would construe it, would be, as appears to us, a manifest perversion of the character of the decree. Had the court undertaken to determine the question of the whole indebtedness, we may suppose it would have found it to have been $172,474, on January 15, 1878, as the master's report found it to be, and which report the court had confirmed.

Various objections are made by appellant's counsel to the statement of account made by the court subsequent to January 25, 1878, the date of the Wilshire decree.

Pending this suit the assignee and the adverse parties in interest came to an agreement that the assignee should sell and they buy several of these collateral securities, and the consideration was that such sale should be in full satisfaction of the principal notes so held by the bank and others. The items of the account and the amounts thereof since January 15, 1878, claimed by either side, where agreed upon by them or proved, and they waived a reference to the master to state such account, and submitted respectively to the court, a statement of account, each excepting to several items presented by the other.

Three certain stipulations as to the charges to be made against the bank on account of collaterals taken for the surrender of certain principal notes were introduced in evidence.

A point is made on them, that they contemplate a new account should be taken, and the bank should thereby be precluded from insisting upon the finding in the Wilshire decree. We do not think this point should be sustained, especially in view of the statement in the stipulations, "neither party intending hereby to concede any matter other than that by the surrender of the claim to the securities the said notes are paid."

Question is made as to the effect to be given to these stipulations. The first stipulation is in the Bauer suit of date January 12, 1883, and respects six principal notes and their collaterals. One of these principal notes belonged to the

bank, and the other five to Miller and Liebenstein and Loebnitz. The stipulation was between all these named persons, the bank, and the assignee, and by it the bank, Miller, Liebenstein and Loebnitz accepted in satisfaction of the six principal notes the surrender from the assignee of the collateral securities accompanying the notes. In the account the bank is charged only with the one principal note which belonged to it, whereas it is insisted the bank should have been charged with the whole six notes. We can not see how this should be unless all these six notes entered into and formed part of the Wilshire decree. But we do not understand that they did. The Wilshire decree fixed the amount of the indebtedness from Walker to the bank on January 15, 1878. These notes were made and due in 1873, and as only one of them belonged to the bank, it having sold the other five to the persons named, we suppose that decree to have embraced only that one of the notes which belonged to and was due the bank. We must suppose the other persons who held the other five notes canceled and surrendered them to the assignee when he gave up to them the collaterals. Stress is laid upon particular words which are used in other parts of the stipulation, as that the surrender of the collaterals should be "taken as if enforced, each payment of the full amounts of said notes had been made of each of them by Samuel J. Walker," and that in the taking of the account between "Walker and the bank" in any suit or suits, the full amounts should be charged, if otherwise proper to be allowed and charged. But there is the qualification, "neither party intending hereby to concede any matter other than that by the surrender of the claim to the securities the said notes are paid as above provided for;" so that it seems to amount to no more than that the surrender of the collaterals paid the notes.

The stipulation dated December 19, 1883, only deals with two principal notes which belonged to Bauer, and he takes the collateral securities accompanying them in satisfaction of the notes. It is objected that the bank should have been charged with these two notes. The same remarks are applicable to this as to the preceding objection.

In one of these several Walker cases before spoken of, that of *Bauer* v. *Walker* and others, wherein the bank was a party, there was a decree in favor of the complainant and a sale had under it, under a security given by

Walker, of lots 21 to 36, block 10, Walker's Dock Addition, and the property was bought in at the master's sale by one Rosenberg, for the use of the parties in interest, under the decree, for $54,500, the bank's *pro rata* share of which was $21,232.82. The decree was afterward reversed. Appellant's counsel insists the bank should have been charged in the account with this sum of $21,232.82; that the reversal of the decree did not make void the sale which had been made under it, but that the sale was only voidable at the election of the defendant; and that further the assignee has filed a bill to set aside that sale, and the court refused to do so, so that appellant is entitled to demand that the bank should account for what it realized by that sale.

It does appear that on June 27, 1881, after the reversal of the decree in the Bauer case, a supplemental cross-bill was filed in the cause by the assignee to, among other things, set aside the sales made under the decree including that of lots 21 to 36 in block 10, Walker's Dock Addition, and to set aside the deed made by Eli Kinney and wife vesting the title through mesne conveyances in Lowenthal, and to have the deed from Walker and wife to Kinney of said lots declared a mortgage, and that the court, upon answers filed by the bank and others, and the trial of the issues thereby made, entered a decree on July 11, 1882, finding that Walker being seized in fee of the lots, conveyed them to Eli Kinney. That the assignee claimed that the deeds, though absolute in form, were intended as mortgage security, as to which the court made no finding. That the property, through sundry mesne conveyances, came from Kinney to Louis Kuhn. That Kuhn, on Nov. 16, 1880, by deed duly recorded, conveyed the lots to Berthold Lowenthal. That the title so acquired by him was vested in him in trust for himself, and the bank, Schoelkopf and Bauer. That they were innocent purchasers for value without notice. That the assignee did not commence suit within two years from the time when the cause of action accrued to him. That he was put upon inquiry of the adverse claim of Kinney more than two years before commencing the suit. That he had been guilty of negligence in bringing the suit, and that he is now barred of any suit by virtue of the statute of the United States in such case made and provided. And the supplemental cross-bill was dismissed for want of equity nothing being said as to the sale under the reversed decree

This decree would seem to be an adjudication that Walker had no title to the property at the time of the sale under the Bauer reversed decree, and if not, the bank got nothing by its purchase at the sale, and there would be no equity in charging it in account with the amount of that sale. But appellee's counsel insist upon nothing more than that the decree being reversed the sale became void and that the security has never been foreclosed, but that the suit is still pending for that purpose, and when the security is collected the bank will be charged. The filing of the supplemental cross-bill by the assignee was an election to avoid the sale.

We are unable to say there was error in disallowing this item of account.

As regards the other objections to the account stated, it appears that prior to a writ of error being sued out and served in this case, all of the collaterals described in the objections were sold to the complainant, the bank.

On June 28, 1881, the assignee filed a supplemental cross-bill in which he set up the reversal of the decree, elected to have the sales set aside, and asked for a decree of the court to that effect, and for a surrender of the collaterals to him after satisfaction of indebtedness due the bank on accounting. On January 12, 1884, the assignee, by leave of court, dismissed without prejudice his supplemental cross-bill, filed in 1881, as to all the items of sale except the Kohn notes. Two principal notes, each for $6,000, made by Walker to the bank, were sold by the bank to H. A. Kohn & Bros. at the time of their execution. Walker also pledged as collateral security two other notes of $12,500 each, executed by himself, for security of which and of two other collateral notes made by him of $12,500 each—there being four collateral notes in all—Walker executed his trust deed to Rogers, trustee, conveying blocks 84, 85 and the north half of blocks 91 and 92 in Canalport. The two collateral notes securing the two principal notes of $6,000 each, sold to Kohn, were delivered to Kohn by the bank; the other two collateral notes were pledged with the bank as a general collateral for any and all indebtedness due or to become due the bank from Walker, which latter collaterals were sought to be sold under the bill in this case.

The principal notes held by Kohn being due and not paid, he caused advertisement to be made by the trustee, Rogers, for the foreclosure and sale of the premises in the trust deed described. Therefore in 1875 Walker filed his

supplemental cross-bill and obtained an injunction stopping that sale. Upon the hearing in 1878 Walker's cross-bill and supplemental cross-bill were dismissed for want of equity, and the temporary injunction which had been granted was dissolved.

The writ of error was sued out by Walker from the Appellate Court to that decree on June 18, 1878, but there is nothing in this record showing when such writ of error was served. An appeal or writ of error does not continue an injunction in force unless so ordered. Rev. Stat. 1874, p. 581, Sec. 21. It was not so ordered here, and the injunction was not continued in force. The decree of the Circuit Court was affirmed by the Appellate Court, and a writ of error was not sued out of the Supreme Court in this case until long after September 19, 1878.

On September 19, 1878, Rogers, the trustee, at the request of Kohn and the bank, again advertised said blocks 84, 85, and the north half of blocks 91 and 92 for sale, and sold the same to Kohn for $14,786.50 under the powers in said trust deed. The Kohns and the bank being both interested in said security it was bought in by Kohn for the benefit of both, and Kohn and the bank were each charged with one half of said bid at the sale. In this account here the bank is charged with its half, $7,393.25. The assignee objected to this and called for an accounting of what the collaterals were held as security for, or that those collaterals should be excepted and the bank not be charged therewith. And the claim is that the assignee has a right to take the property so foreclosed and bought in under the trust deed for payment of the notes secured; that the foreclosure by sale of the trustee, while this suit was pending, was illegal and void. Although the effect of the sale of the collaterals under the decree which has been reversed, whether the sale thereby became void or only voidable, and whether or not it has been disaffirmed by the assignee, has been much discussed in the argument; we do not regard that a practical question here, which need be considered, inasmuch as it is not the sum which the collaterals sold for at the master's sale under the decree, which either party seeks to have brought into the account, and the bank charges itself, and is charged in the account, with the amount of the bid at the trustee's sale. The right to sell under the trust deed was not at all dependent upon any purchase of the collaterals upon a sale made of them. That was not the source

of the trustee's power to sell. His power came from Walker himself, in his trust deed.

In making the sale under the trust deed, the trustee was but exercising the precise authority which Walker had given him to make the sale. And the right of the Kohns and the bank to direct the trustee to make the sale did not depend upon any purchase by them of the collaterals, but it came from the pledge of the collaterals by Walker with the bank. He pledged them for the payment of his indebtedness to the bank, and the bank had the right to enforce their collection for the payment of such indebtedness. There being no injunction against the sale by the trustee, and no irregularity in the making of it being complained of, and the principal indebtedness being established, we do not see why the trustee's sale should not stand.

The only objection to it is, that it was made while this suit was pending. This suit sought to have the collaterals sold for the payment of the principal indebtedness. The trustee's sale was a proceeding to collect the collaterals, by selling under a trust deed, property conveyed to secure payment of the collaterals. These were two independent remedies for enforcing payment of the principal indebtedness. There was still another remedy which was open, to bring suit upon the collaterals to enforce their collection. These were but different remedies, and it is not perceived why the pursuing of either one should be a bar to the pursuit of the others. There is a propriety that such a suit as this, for a sale of the collaterals, should not be held to stay the collecting of them, as through delay of their collection until the end of the suit, the collaterals might become impaired or worthless. The trustee's sale during the pendency of the suit, was of course subject to whatever decree might be rendered therein. Had the decree found that there was nothing due of the principal indebtedness for which the collaterals were pledged, then the trustee's sale would have been invalid, and have gone for naught.

But the whole principal indebtedness being established by the decree to be due and unpaid, we do not regard the pendency of this suit as affecting the trustee's sale.

A consideration of the many exceptions to the account and all that has been urged in their support, has not made it satisfactorily appear to us that there is any error in the account.

The judgment of the Appellate Court must be affirmed.

STATE OF ILLINOIS,
SUPREME COURT,
Northern Grand Division. } ss

I, EVERELL F. DUTTON, Clerk of the Supreme Court, in and for the Northern Grand Division of the State of Illinois, and Keeper of the Records and Files thereof, DO HEREBY CERTIFY that the foregoing is a true copy of the final opinion of the said Supreme Court in the above entitled cause, of record in my office..

IN TESTIMONY WHEREOF, I have set my hand and affixed the seal of the said Supreme Court, at Ottawa, this seventeenth day of November, in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL]

E. F. DUTTON,
Clerk of the Supreme Court.

STATE OF ILLINOIS,
SUPREME COURT,
Northern Grand Division.
At a Supreme Court, &c.

ROBERT E. JENKINS,
Assignee, etc.,
No. 27 vs. 1085
THE INTERNATIONAL BANK OF CHICAGO *et al.*

Appeal from 1st District

November 17, A. D. 1884.

On this day came again the said parties, and the court having diligently examined and inspected, as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the decree aforesaid is there anything erroneous, vicious or defective, and that that record is no error. Therefore, it is considered by the court that the decree aforesaid, be affirmed in all things, and stand in full force and effect, notwithstanding the said matters and things therein assigned for error.

And it is further considered by the court that the said International Bank of Chicago et al., appellees, recover of and from the said Robert E. Jenkins, assignee, etc., their costs, by them in this behalf expended, to be taxed, and that they have execution therefor.

ERRORS ASSIGNED IN THE SUPREME COURT OF THE UNITED STATES.

The plaintiff in error, by his attorney, William T. Burgess, comes and says that in the record, proceedings and judgment aforesaid there is material error manifest of record, in this:

First. That the Supreme Court of Illinois held the decree in the case of Wilshire *et al.* vs. International Bank of Chicago *et al.*, relied on in pleading and introduced in evidence in and before the Circuit Court of Cook County, Illinois, by the defendants in error, not barred as against him the said plaintiff in error as such assignee in bankruptcy as aforesaid, under and by virtue of the statutes of the United States in that behalf provided, whereas it should have held it so barred.

Second. That the Supreme Court of Illinois affirmed the judgment of the Circuit Court aforesaid in overruling the demurrer of the plaintiff in error to the supplemental bill of complaint of said International Bank against him.

Third. That the Supreme Court of Illinois held that the said plaintiff in error as such assignee in bankruptcy as aforesaid, acting under the statutes of the United States in that behalf provided, had not the right and refused to allow him to show that the said decree was inequitable, erroneous and unjust, and ought not to be enforced as against him, whereas it should have held that he had such right and allowed him to do so.

Fourth. That the Supreme Court of Illinois affirmed the judgment of the said Circuit Court, sustaining the exceptions taken by the International Bank to the answer of the said plaintiff in error to the supplemental bill of complaint of said bank.

Fifth. That the Supreme Court of Illinois affirmed the judgment and order of the said Circuit Court in excluding the evidence offered by the plaintiff in error touching said Wilshire decree.

Wherefore he prays that the judgment of the said Supreme Court of Illinois aforesaid, be reversed, etc., and he restored, etc.

W. T. BURGESS,
Attorney for Plff. in Error.

IN THE

APPELLATE COURT OF ILLINOIS.

FIRST DISTRICT.

MARCH TERM, A. D. 1884.

ROBERT E. JENKINS, AS ASSIGNEE IN BANKRUPTCY OF SAMUEL J. WALKER,
Appellant,

vs.

THE INTERNATIONAL BANK OF CHICAGO, B. LOEWENTHAL, A. BAUER, HENRY A. KOHN, DAVID A. KOHN, JULIUS A. KOHN JOSEPH A. KOHN, LEOPOLD MILLER, JACOB LIEBENSTEIN, C. EDWARD SCHOELKOPF, EDWARD KOCH, JOSEPH AUSTRIAN, MARTIN CLAYBURGH, SIMON YONDORFF, AND JOHN G. ROGERS,
Appellees.

Appeal from
Circuit Court
of Cook County.

ABSTRACT OF RECORD.

Placita, January Term, 1884, Hon. M. F. TULEY, Judge.
Stipulation. Title of cause. No. 15,157.

It is hereby stipulated by the parties by their solicitors that for the purposes of the appeal taken in this cause to the Appellate Court of the First District, from the decree rendered herein the 16th Feb'y, A. D. 1884, the annexed

printed abstract shall be deemed and taken to be a sufficient transcript of the process issued, pleadings filed, proceedings had and orders of the court made in said cause from the commencement thereof down to and including the 11th day of May, A. D. 1877, except as to the order made and stipulation filed 12th January, A. D. 1876, which are to be copied in full in the transcript.

Bill, filed February 17, 1875, sets out that the complainant was originally organized a private corporation under a statute of Illinois, by the name of "The International Mutual Trust Company," and on the 18th June, 1872, its name was duly changed to that of "International Bank of Chicago." That Samuel J. Walker is largely indebted to complainant upon the various securities as hereinafter stated, the evidence of which will be set out and numbered in this bill. That S. J. Walker, for a valuable consideration, at time the several notes thereinafter described bear date, executed and delivered to complainant notes of which following are copies :

"*No. 2659. Chicago, April 4, 1873, $5,000. Sixty days (no grace) after date, for value received I promise to pay at the office and to the order of the International Bank, the sum of* five thousand dollars, *with interest at ten per centum per annum after due, and in case this note shall not be paid within three days after maturity thereof, interest shall henceforth be charged and paid at the rate of twenty-four per cent. per annum, such rate being agreed upon as the measure of liquidated damages for the non-payment hereof at maturity; having deposited with said International Bank as collateral to secure the payment hereof,* note $6,666, 66–100 executed by A.C. Badger, and secured by trust deed to John G. Rogers on W½ Block 32, E½ S. 31, 39, 14 E. 3, *which note I hereby give the legal holder of this note authority to sell, or any part thereof, on the maturity of this note, or at any time thereafter, or before, in the event of said securities depreciating in value in the opinion of said holder, at public or private sale at his discretion, without advertising the same, or giving me any notice (notice is hereby expressly waived), and to apply so much of the proceeds thereof to the payment of this note as may be necessary to pay the same, with all interests due thereon, and also to the payment of all expenses attending the sale, and also five per cent. as a brokerage or commission for selling the collaterals; and in case the proceeds of the sale of the said note shall not cover the principal, interest and expenses, I promise to pay the deficiency forthwith after such sale.*

(*Signed*) SAM'L J. WALKER."

(NOTE.—The words in italics are common to all the principal notes set out in the bill.)

2. No. 2822, date Chicago May 29, 1873, by S. J. Walker to the bank for $8,000 at ninety days (no grace), ten per cent. after maturity if not paid in three days, interest at twenty-four per cent. deposit "two notes of A. C. Badger $6,666.66 each, secured respectively by trust deed to John G. Rogers E½ and W½ 33, 31, 39, 14."

3. No. 2701, date Chicago April 15, 1873, for $4,000 by S. J. Walker to the bank at sixty days (no grace), ten per cent. after due if not paid in three days, interest at twenty-four per cent. deposit "as collateral to secure payment hereof and of another note for $4,000 by me executed, a note of H. H. Walker for $12,500, secured by trust deed to J. G. Rogers, lots 1 and 2, block D, Wright's add."

4. No. 2795, Chicago Nov. 20, 1872, for $4,000 by S. J. Walker to the bank at six months (no grace), interest at 10 per cent. after due, if not paid in ten days, interest at twenty-four per cent. deposit "as collateral to secure the payment hereof, and of two other notes for same amount and of even date, tenor and effect herewith, note of H. H. Walker for $15,000 dated April 10, 1871, and secured by trust deed to John G. Rogers on lot 14 blocks 10 and 15, N. E., N. E., 18, 39, 14."

5. No. 2706, Chicago, Nov. 20, 1872, for $4,000 by S. J. Walker to bank at six months (no grace), interest ten per cent. after due, if not paid in ten days, interest at twenty-four per cent. deposit "as collateral to secure the payment hereof, and of two other notes of same amount and of even date, tenor and effect herewith, note of H. H. Walker for $15,000, dated April 10, 1871, and secured by trust deed to John G. Rogers on lot 14, blocks 10 and 15, N. E., N. E., 18, 39, 14."

6. No. 2797, Chicago, Nov. 20, 1872, for $4,000 by S. J. Walker to the bank at six months (no grace), interest at ten per cent. after due, if not paid in ten days after due, twenty-four per cent. interest, deposit "as collateral to secure the payment hereof and of two other notes for same amount and of even date, tenor and effect herewith, note of H. H. Walker for $15,000, dated April 10, 1871, and secured by trust deed to John G. Rogers on lot 14, blocks 10 and 15, N. E., N. E., 18, 39, 14."

7. No. 2009, Chicago, Dec. 30, 1871, for $10,000 by S. J. Walker to "International Mutual Trust Company," interest

at ten per cent. after due, if not paid in ten days after due, then interest at twenty-four per cent. Deposit "as collateral to secure the payment hereof and of five other notes of even date herewith executed by myself for $10,000, $15,000, $5,000, $8,750 and $16,748, respectively, three notes for $50,000 each, executed by myself, bearing date Dec. 29, 1871, and secured by trust deed to J. G. Rogers."

8. No. 2013. Chicago, December 30, 1871, by S. J. Walker to Int. Mut. Trust Co. for $16,748 at three months, (no grace,) interest 10 per cent. after due; if not paid 10 days after due, at 20 per cent. Deposit "as collateral to secure the payment hereof, and my other five notes of even date, herewith being respectively for $10,000, $10,000, $5,000, $5,000, $8,750, three notes for $50,000 each, executed by myself, dated December 29, 1871, and secured by trust deed to J. G. Rogers."

9. No. 2740. Chicago, April 29, 1873, for $5,000 by S. J. Walker to the bank at 60 days, (no grace,) but at 10 per cent. after due; if not paid within three days after due, interest at 24 per cent. Deposit as "collateral to secure payment hereof, and of our other note of even amount, date, tenor and effect, a note executed by H. H. Walker, dated August 16, 1871, for $13,500, secured by trust deed to John G. Rogers."

10. No. 2741. Chicago, April 29, 1873, for $5,000, by S. J. Walker to the bank at 60 days, (no grace,) interest at 10 per cent. after due, if not paid in three days then 24 per cent. Deposit as "collateral to secure the payment hereof, and our other note of even amount, date, tenor and effect, a note executed by H. H. Walker, dated August 16, 1871, for $13,500, secured by trust deed to John G. Rogers."

11. No. 2629. Chicago, March 27, 1873, for $6,000 by S. J. Walker to the bank at 90 days (no grace), interest at 10 per cent. after due, if not paid in three days, then at 24 per cent. Deposit "as collateral to secure the payment hereof my note for $7,500 (No. 5) bearing date January 2, 1873, and secured by trust deed to Julius Rosenthal and three notes executed by Dommermuth for $300 each, dated March 24, 1873, due respectively one, two and three years, secured by trust deed to Francis A. Hoffman, Lot 1, H. H. Walker's subdivision, block 7, Laughton's subdivision, W. ½, N. W. ¼, S. 30, 39, 14."

12. No. 2891. Chicago, June 20, 1873, for $10,000 by S. J. Walker to the bank at 60 days, interest at 10 per cent.

after due, if not paid in three days after due, then at 24 per cent. Deposit "as collateral to secure the payment hereof, my notes for $7,500 (No. 9) and for $7,500 (No. 12), bearing date January 2, 1873, and secured by trust deed to Julius Rosenthal."

13. No. 2527. Chicago, January 20, 1873, for $6,000 by S. J. Walker to the bank at 60 days (no grace), interest at 10 per cent. after due, if not paid in three days after due, then at 20 per cent. Deposit "as collateral to secure the payment hereof, my note $7,500 (No. 11) bearing date January 2, 1873, and secured by trust deed to Julius Rosenthal."

14. No. 2529. Chicago, January 20, 1873, for $6,000 by S. J. Walker to the bank at 60 days, (no grace,) interest at 10 per cent. after due, if not paid in three days after due, then at 20 per cent. Deposit "my note for $7,500 (No. 13) bearing date January 2, 1873, and secured by trust deed to J. Rosenthal.

15. No. 2612. Chicago, March 14, 1873. By S. J. Walker to the bank for $7,500, at 4 month's interest at ten per cent. after due; if not paid three days after due, then at 24 per cent. Deposit "note for $10,000, executed by H. H. Walker and secured by trust deed to Francis A. Hoffman, on block 15, N. E. S. W. 5, 38, 14, 3."

16. No. 3082 A. Chicago, Sept. 4, 1873, for $10,000, by S. J. Walker to the bank at 60 days, interest after due, at 10 per cent.; if not paid 3 days after due, then at 24 per cent. Deposit "three notes executed by Francis A. Riddle for $5,200 each, dated Feb'y 15, 1871, and secured by trust deed E. 133x396, of block 7, E. ½, S. E. ¼, 18, 39, 14."

17. No. 3082 B. Chicago, April 14, 1874, by S. J. Walker to bank, for $8,000, at 10 days interest ten per cent. after due; if not paid in 3 days after due, then at 20 per cent. Deposit "as collateral to secure the payment hereof, and of one other note of $10,000, dated Sept. 4, 1873, three notes executed by Francis A. Riddle for $5,200 each, dated Feb'y 15, 1871, and secured by trust deed E. 133x396, of block 7, E. ½, S. E. ¼, 18, 39, 14."

18. No. 2430. Chicago, Nov. 24th, 1872, by S. J. Walker to the bank, for $5,000, at 60 days (no grace), ten per cent. after due; if not paid three days after due, then at 24 per cent. Deposit "as collateral to secure the payment hereof. sundry notes being purchase paper for real estate, viz.: W. Kerrigan, 3 notes, $500 each, lot 43, block 5, 30, 39, 14; P, Mueller, 2 notes, $1,500 each; 50 and 51, block 2, 30, 39, 14;

D. McGuin, 4 notes, $300 each, 1 note, $200, lot 17, block 2, 30, 39, 14; L. Lues, 3 notes, $166.66, lot 32, block 5, 30, 39, 14; P. Higgins, 3 notes, $2,666.66, lot 19, block 4, 30, 39, 14. Trust deeds to F. A. Hoffman."

19. No. 2698. Chicago, April 15, 1873, for $1,000 by S. J. Walker to the bank at 90 days (no grace), at ten per cent. after due, if not paid three days after due then at 24 per cent. Deposit "three notes each $400, executed by Carl Wandersee, secured by trust deed."

20. No. 3151. Chicago, September 18, 1873, for $12,500 to S. J. Walker to the bank at 60 days (no grace). Interest at ten per cent. after due, if not paid three days after due then at 24 per cent. Deposit "twenty bonds of the Chicago, Danville & Vincennes Railway Company first mortgage, $1,000 each, number 4251 to 4270."

21. No. 3276. Chicago, January 17, 1874, for $10,000 by S. J. Walker to the bank at 60 days, interest at ten per cent. after due, if not paid within three days after due then at 24 per cent. Deposit "my check for $10,000, dated September 18, 1873, on A. C. & O. F. Badger and by them certified, also note of John D. Kinney for $6,500 due January 21, 1874."

22. No. 3394. Chicago, March 17, 1874, for $41,756.67 by S. J. Walker to the bank, at 10 days, interest at ten per cent. after due, if not paid in three days after due, then at twenty-four per cent. Deposit, "five notes of the Chicago, Danville & Vincennes Railroad, signed by Joseph E. Young, Manager, and guaranteed by me, amounting in all to $39,158, as follows: $7,500, $8,333, $8,625, $7,250 and $7,350.

23. That S. J. Walker is indebted to complainant, as guarantor, upon a note date June 27, 1873, executed by J. D. Kinney, of Cincinnati, Ohio, for $7,000, due ninety days after date, to order of S. J. Walker, upon which judgment has been obtained in Cincinnati, Ohio.

24. That S. J. Walker is indebted to complainant, as guarantor, upon a note made by said Kinney, date June 27, 1873, for $5,000 due four months after date, to order of S. J. Walker. That immediately upon maturity of notes the complainant sued and obtained judgment against Kinney in the Superior Court of Cincinnati, Ohio, upon said notes, but collected nothing. S. J. Walker is liable to bank for amount of notes and interest.

That on the 7th July, 1869, made to complainant an instrument as follows:

Chicago, July 7th, 1869. Whereas, the undersigned heretofore, and intends hereafter to borrow money from the International Mutual Trust Company on his own note, or notes, or the note or notes of H. H. Walker, and, whereas, to secure the payments of such note, or notes, he has heretofore, and intends hereafter to deposit collateral security, and, whereas, such collaterals were given and are hereafter to be given to secure the payment of specific notes; now, therefore, for the purpose of more fully securing the said International Mutual Trust Company, I do hereby agree that all and singular the collaterals by me given, or to be given, as aforesaid, shall at the option of said International Mutual Trust Company, apply generally to all the notes held at any time by said Trust Company, executed by me or said H. H. Walker, and shall also apply and be considered as collaterals to secure the payment of any and all notes negotiated for my account by said Trust Company.

SAMUEL J. WALKER.

That on the 30th December, 1871, S. J. Walker made an agreement with orator, copy as follows:

Whereas, the undersigned has executed three certain notes for $50,000, dated December 29, 1871, and secured by trust deed to John G. Rogers, said notes to be pledged to the International Mutual Trust Company to secure my notes for $10,000, $10,000, $10,000, $8,750 and $16,748, respectively; and whereas, the said International Mutual Trust Company and other parties through the said company, holds my paper, with other securities, for sundry amounts, now it is hereby agreed and understood that the said three notes for $50,000 each shall be held by said Trust Company as general collaterals to secure the paper aforesaid, after the notes above enumerated shall have been paid. Dated this 30th day of December, 1871.

SAMUEL J. WALKER.

That the said S. J. Walker, on the 9th July, 1873, made unto the complainant another agreement, copy as follows:

Whereas, the undersigned has heretofore, and intends hereafter, to borrow money from the International Bank of Chicago, formerly the International Mutual Trust Company, either on his own note, or notes, book accounts, or checks, or any other evidence of indebtedness, or the note or notes of Henry H. Walker; and whereas, to secure the payment of said note or notes, book accounts, checks, or other evidence of indebtedness, he has heretofore, and in-

tends hereafter to deposit collateral securities; and whereas, such collaterals were, and will be hereafter given to secure the payment of specific notes, checks, or other indebtedness.

Now, therefore, for the purpose of more fully securing the said International Bank, or any person holding my notes purchased of said bank, I do hereby agree that all and singular the collaterals by me given, or to be given as aforesaid, shall, at the option of said International Bank, apply generally to all the notes held at any time by said bank, executed by me or said Henry H. Walker, and shall also apply and be considered collaterals to secure the payments of any and all of my notes negotiated by said bank, book accounts, checks or any other evidence of indebtedness to said bank. Chicago, July 9, 1873.

SAMUEL J. WALKER.

That in order the said indebtedness so evidenced by the promissory notes, as aforesaid, and in order and in consideration that complainant would receive said evidences, said Walker deposited and pledged as security for payment of said notes the following described collaterals:

That to secure note 1, he deposited and pledged with complainant a note for $6,666,66, Chicago, January 5, 1871, by Alpheus C. Badger to S. J. Walker, at two years, interest at eight per cent., payable annually, secured by trust deed, date January 5, 1871, by A. C. Badger, to John G. Rogers, conveying the W½ Block 32, C. T. subdivision of E½ of S. 31, T. 39, N., R. 14, E. 3 P. M. Recorded January 7, 1871, Book 587, page 270.

That to secure note No. 2822, said S. J. Walker, for a valuable consideration, endorsed, deposited and pledged with complainant a note by A. C. Badger, for $6,666.66, Chicago, January 19, 1871, at one year, to S. J. Walker, interest at eight per cent., to secure which A. C. Badger, on 19th January, 1871, made to J. G. Rogers trust deed conveying in trust E½ Block 33, C. T. subdivision of E½ S. 31, T. 39 N., R. 14, E. 3 P. M. Recorded January 21, 1871, Book 587, p. 284, and at same time and for same purpose, endorsed, pledged and deposited with complainant a note made by said A. C. Badger for $6,666.66, dated Chicago, January 19, 1871, to order of S. J. Walker, at two years, interest eight per cent., payable annually, to secure which A. C. Badger and wife gave to J. G. Rogers trust deed con-

veying W½ block 33, C. T. subdivision E½ S. 31, T. 39, N. R. 14 E., in Chicago. Recorded January 21, 1871, Book 587, p. 283.

That to secure note 3, S. J. Walker, endorsed, pledged and deposited with complainant a note by H. H. Walker for $12,500, Chicago, August 18, 1870, at one year, to his own order, with interest at eight per cent., and endorsed in blank. That to secure it H. H. Walker made to John G. Rogers, trustee, a trust deed conveying lots 1 and 2 in block D, in Wright's addition in S. W¼ S. 8, 39, 14, Cook county. Recorded August 26, 1870, Book 601, p. 497.

That complainant holds said pledged note and trust deed which were also pledged to secure another note for $4,000 now held by the firm of Miller & Liebenstein (Leopold Miller and Jacob Liebenstein), dated June 19, 1871, No. 1018, at 60 days (no grace), by S. J. Walker to Mutual Trust Company, with interest at ten per cent. after due, if not paid ten days after due, at twenty per cent., and they, Miller & Liebenstein, have a right to participate in proceeds of said collaterals, and holder will account for them when realized.

That to secure said 4th, 5th and 6th notes above set out, S. J. Walker endorsed, pledged and delivered to complainant a note for $15,000 dated April 18, 1871, made by Henry H. Walker, payable two years after date, with annual interest at eight per cent. then and there endorsed by S. J. Walker in blank. That to secure it, H. H. Walker made to J. G. Rogers a trust deed conveying lot No. 14 of Walker and and others N. subdivision of blocks 10 and 15 of S. F. Smith's subdivision in N. E. ¼ S. 18, T. 39, N. R. 14 E., in Chicago. Recorded May 19, 1871, Book 600, p. 251.

That to secure notes 7th and 8th above, said S. J. Walker pledged and deposited as collateral security with complainant three notes dated Dec. 29, 1871, to his order for $50,000 each at eighteen months, with interest at eight per cent. and by him indorsed in blank. That to secure said three $50,000 notes, said S. J. Walker by trust deed dated Dec. 29, 1871, conveyed to J. G. Rogers lots Nos. 21 to 36 inclusive in block 10, and lots 19 to 28 inclusive in block 13 in S. J. Walker's dock addition to Chicago, recorded Jan. 5, 1872, book 35, p. 291. That afterwards complainant surrendered one of said $50,000 notes by agreement between said Walker and B. Loewenthal unto Loewenthal, and complainant in consequence thereof, released its lien upon lots 19 to 28 in block 13, and it was then and there agreed between

said Walker, complainant, and Loewenthal that the premises last described should be considered as released so far as complainant was concerned, and in consideration of said agreement S. J. Walker on 24th June, 1872, made another note for $50,000 at eighteen months with eight per cent. interest to his own order, and indorsed by him in blank and pledged and deposited with complainant as collateral security for payment of said notes 7th and 8th above set out, and to secure said last named $50,000 note of said S. J. Walker and wife made to John G. Rogers a trust deed dated June 24, 1872, conveying to Rogers lots 11 to 18 in block 12 in S. J. Walker's dock addition to Chicago, recorded June 28, 1872, book 86, p. 530.

That two of three $50,000 notes secured by trust deed of Dec. 29, 1871, and the other $50,000 note secured by trust deed of June 24, 1872, are held by complainant not only to secure the said notes 7th and 8th, above set out, but also to secure four other notes, one of which is owned by said Loewenthal, dated Dec. 30, 1871, for $8,750, at 3 months; another by C. Edward Schoelkopf for $5,000, date Dec. 30, 1871, at 60 days; another by C. Edward Schoelkopf for $5,000 date Dec. 30, 1872, at 60 days; another by Augustus Bauer for $10,000, dated Dec. 30, 1872, at 90 days. That said Loewenthal, Schoelkopf and Bauer are entitled to participate in the proceeds of said three $50,000 notes.

That to secure payment of the 9th and 10th notes above set out, S. J. Walker deposited and pledged with complainant two notes, one for $13,500, date August 16, 1871, at 18 months, made by H. H. Walker, to his own order, annual interest at eight per cent.; another for $13,500, date Aug. 16, 1871, at 24 months, made by H. H. Walker to his own order, annual interest at eight per cent., and both indorsed by him. That to secure payment of said two notes S. J. Walker and wife made to Rogers trust deed conveying to him lots 1, 2, 34, and 17 to 25 inclusive and lots 27 to 32 inclusive in block 6 in Sutton's addition to Chicago, recorded Aug. 21, 1871, book 600, p. 459. That said two notes were also pledged at same time to secure two other notes of $5,000 each, Nos. 2738, 2739, which were afterwards negotiated and sold by complainant to Edward Koch and which notes have since been paid by S. J. Walker.

That to secure the note 11 above, S. J. Walker indorsed, deposited and pledged with complainant two notes, one for $300, March 24, 1873, at two years, by John Dommermuth, to H. H. Walker, annual interest at eight per cent., and one

for same amount and date and interest at three years, and to secure them, said Dommermuth made to Francis A Hoffman a trust deed, March 24, 1873, conveying lot No. 1 in H. H. Walker's subdivision of part of block 7, in Laughton's subdivision of W. ½ N. W. W. ¼ S. 30, T. 39, 14, recorded March 20, 1873, book 222, p. 334, and also to secure 11th note said S. J. Walker did indorse, deposit and pledge a note dated January 2, 1873, at 2 years, made by (not stated) to his own order, for $7,500, interest at ten per cent. semi-annually, being one of several of the same tenor and effect, No. 1 to 13 inclusive, amounting to $97,500, secured by a trust deed recorded in the Recorder's office of Cook County.

That to secure 12th note above set out, said S. J. Walker indorsed, deposited and pledged two notes, of which the $7,500 last described, dated Jan. 2, 1873, "is all exact copy."

That in order to secure the 13th note above, said S. J. Walker indorsed, deposited and pledged with complainant, a note of which the $7,500 note last described is an exact copy.

That in order to secure 14th note said S. J. Walker indorsed, deposited and pledged with complainant one note, of which the $7,500 note last above described is an exact copy.

That said notes so deposited and pledged were five of a series, running from one to thirteen, all of same date and amount and order, all secured by one trust deed of even date therewith, made by said S. J. Walker and wife to Julius Rosenthal, conveying eight hundred feet front on Canal by metes and bounds (set out), recorded January 18, 1873, book 161, page 177, note 5 to secure 11th note, 9 and 12 to secure 12th note, note 11 to secure 13th note, and 13 to secure 14th note, and note 1 to secure a note due complainant, No. 2,516, for $5,000, afterwards sold to Joseph Austrian, who still holds the same. That note, No. 2 of series, was deposited and pledged to complainant as general security for all indebtedness due or to become due complainant from said S. J. Walker. That note, No. 3 of series, was deposited and pledged by Walker as complainant, to secure said Walker's note to it, No. 2,538, for $4,000, afterwards sold and delivered and sold to Augustus Bauer, and still held by him. That note four of series was deposited and pledged with complainant to secure note No. 2,519, for $3,500, and another, No, 2,714, for $3,000, which were afterward sold and delivered by complainant to H. A. Kohn & Bros. (composed of Henry A., Joseph A., David A., and Julius A.

Kohn). That note, No. 6 of series, was deposited and pledged with complainant to secure note of S. J. Walker, No. 2,522, for $5,000, afterwards sold by complainant to H. A. Kohn & Bros., and still owned by them. That note, No. 7 of series, was sold and delivered to B. Loewenthal, and is still held by him. That note, No. 8 of series, was deposited and pledged with complainant to secure note of S. J. Walker, No. 2,716, for $5,000, afterwards sold by complainant to H. A. Kohn & Bros., still held by them. That note, No. 10 of series, was then and there pledged to complainant to secure a note of S. J. Walker, No. 2,526, for $5,000, afterwards sold and delivered by it to Edward Koch, who still holds and owns it. That all of said thirteen notes were duly indorsed by said J. S. Walker, and were delivered and are now held by the parties who are the owners and holders of the principal notes above described, for which they were specially pledged as aforesaid.

That to secure fifteenth note, S. J. Walker endorsed in blank, pledged and deposited as collateral a note for $10,000, dated September 26, 1870, at two years made by H. H. Walker to order of S. J. Walker, interest at eight per cent., and S. J. Walker to secure it and another note of like date and amount at one year, made to F. A. Hoffman a trust deed, conveying lots 14 and 15, in Packer's subdivision of N. E.¼ of S. W.¼, S. 5, T. 38, R. 14 E., Cook county. That the note due at one year was paid, and lot 14 released from trust deed, which trust deed is recorded September 29, 1873, book 599, p. 331.

That to secure 16th and 17th notes, S. J. Walker endorsed in blank, and deposited and pledged with complainant three notes, each for $5,200, dated February 15, 1871, to order of S. J. Walker, interest at eight per cent., payable annually, made by F. A. Riddle, at one, two and three years, to secure which, Riddle made to Rogers, trustee, a trust deed, conveying all that part of block 7, in Assessor's division of E. ½, S. E. ¼, S. 18, 39, 14, setting it out by metes and bounds, which trust deed was recorded immediately thereafter in book 600, p. 25; said deed of trust was, on the 9th of October, 1871, with the record thereof, destroyed by fire, and afterwards, on the 13th of January, 1873, said Riddle made to Rogers another confirmatory of the former, filed July 10, 1873, recorded in book 266, p. 98. That after execution of deed so destroyed, said premises were sub-divided, and lots 7 and 8 of such sub-division came into the possession of Lucy A. Simmons, who, August

28, 1874, to obtain release of lots 7 and 8, paid complainant $2,500, which was endorsed on said $5,200 note due two years after date, and Rogers released to Simmons said lots.

That to secure the eighteenth note, S. J. Walker endorsed in blank, delivered and pledged three notes made by Dennis McQuirl to S. J. Walker, date June 22, 1872, two for $300 at three and four years, and one for $200 at five years, secured by trust deed to Hoffman, on lot 57 in block 2 of S. J. Walker's Dock addition, recorded December 2, 1872, book 161, p. 45. The two other notes described in trust deed had been paid. He also deposited three notes by Patrick Higgins (set out), secured by trust deed described; two notes by Leonard Lues (set out), secured by trust deed described; two notes by William Kerrigan, (set out), secured by trust deed described; two notes by Ann W. and James Quinn (set out), secured by trust deed described.

That to secure said 19th note, S. J. Walker endorsed, deposited and pledged two notes made by Charles Wandersee, for $400 (set out), secured by a trust deed (described).

That to secure said 20th note, S. J. Walker deposited and pledged with complainant twenty bonds of the Chicago, Danville & Vincennes Railroad Co., Nos. 4,251 to 4,270, each for $1,000, interest at 7 per cent. in U. S. gold coin, principal due in New York April 1, 1913, interest 1st of April and October in each year, secured with others, amounting to $500,000, by mortgage on property of company; set out a copy of one bond and one coupon.

That to said 21st note, S. J. Walker pledged and delivered to complainant his check, dated September 18, 1873, drawn upon A. C. & O. F. Badger, bankers in Chicago, for $10,000 and certified by them; check not paid; suit brought on 19th November, 1874; judgment obtained against A. C. Badger, O. F. Badger and W. W. Hilton, comprising the firm of A. C. & O. F. Badgar in full force and not paid. And to further secure said 21st note S. J. Walker deposited and pledged with complainant, a note made by John D. Kinney of Cincinnati, Ohio, for $6,500, dated September 18, 1873, due four months, guaranteed by S. J. Walker; judgment obtained in Superior Court of Cincinnati for $6,548.15 on it; judgment not paid and in full force.

That to secure 22d note, S. J. Walker deposited and pledged complainant five notes made by the Chicago, Danville & Vincennes Railway Company; sets out copies of them

for $8,333, date July 11, 1873, due Oct. 1, 1873, for $8,625, date August 11, 1873, due at 75 days for $7,500, date July 22, 1873, at 90 days for $7,350, date Sept. 9, 1873 at 95 days, and for $7,350, date September 9, 1878 at 65 days, all to order of S. J. Walker, and by him guaranteed.

That the 23d note, made by J. D. Kinney, was guaranteed by S. J. Walker, and when it became due a judgment was obtained on it against Kinney in the Superior Court of Cincinnati for $7,236.85, in force and not paid, and S. J. Walker is liable to complainant for amount of said note.

That note 24th was guaranteed by Walker, and he is now liable upon it to complainant for its amount.

That said S. J. Walker did from time to time pledge, deposit and deliver unto complainant certain other securities thereinafter described as general collaterals, to secure payment of any and all indebtedness due or to become due it from him, which were then held by the complainant as collateral for all the foregoing debts and liabilities of said S. J. Walker to complainant, which general collaterals are one note by Franz Kusen for $200, date Chicago, September 27, 1871, at three years, to and indorsed by H. H. Walker, secured by a trust deed made by Kusen to E. C. Walker, trustee, of lot 28 in H. H. Walker's subdivision, block 12, in Walsh & McMullin's subdivision of S. E. ¼ S. 20, T. 39 N., R. 14, E.

Two notes by John McQuade, date September 23, 1872, each for $362.50 at three and four years to the order of S. J. Walker and endorsed by him, secured by trust deed made by McQuade to F. A. Hoffman, of lot 104 of subdivision of block 3 of S. J. Walker's Dock addition to Chicago.

Two notes by Charles Manske, each for $250, date Sept. 10, 1872, at two and three years, to and indorsed by S. J. Walker, secured by trust deed made by Manske to F. A. Hoffman, of lot 121, block 2, S. J. Walker's Dock addition.

Two notes by Frank Boehm, each for $1,066.66, date October 24, 1872, at two and three years, to and indorsed by S. J. Walker, secured by trust deed made by Boehm to F. A. Hoffman, of lots 20 and 21 of block 1 of S. J. Walker's Dock addition.

Three notes by George Bradford, each for $225, date April 29, 1873, at 2, 3, and 4 years, to and indorsed by S. J. Walker, secured by trust deed made by Bradford to Hoffman, lot 151, Walker's and Larned's subdivision of lot 12,

of Johnson and Lee's subdivision of S. W. ¼ S. 20, T. 39, N., R. 14, E.

A note by Mary C. and Silas D. Baldwin for $2,000, date June 1, 1871, at five years, to and endorsed by S. J. Walker, secured by a trust deed made by the Baldwins to John G. Rogers, of lots 1 and 2, in subdivision of E. ½ block 7 Assessor's division of E. ½ S. E. ¼ S. 18, T. 39, R. 14, E.

A note by Gregory Walsh, date November 26, 1869, for $760, at one year, to and endorsed by H. H. Walker, secured by trust deed made by Walsh to J. G. Rogers, of lot 9 in block 20 in S. F. Smith's subdivision of N. E. ¼ N. E. ¼ S. 18, 39, 14.

Two notes by F. A. Riddle, date May 27, 1873, each for $5,000, at one and two years, to and endorsed S. J. Walker, secured by trust deed made by Riddle to J. G. Rogers of lot 5 in Ellis & Laflin's subdivision of lots 17 to 37, block 20, C. T. subdivision of W. ½ of W. ½ N. E. ¼ S. 17, T. 39, N., R. 14, E.

Two notes by S. J. Walker, date May 20, 1873, each for $12,500, on or before fifteen months from date, to his own order and endorsed by him, and to secure them and two other notes then held in possession of said Kohn Brothers, for same amount, date, and terms, said S. J. Walker, and wife, made to J. G. Rogers a trust deed of blocks 84 and 85 and N. ½ of blocks 91 and 92, town of Canalport, in S. 30, 39, 14.

A note by Henry E. Pickett for $2,374, date July 31, 1873, at five months, to order of, and endorsed and guaranteed by said Walker.

A note by Henry H. Walker $25,000, dated Covington, January 16, 1868, at 18 months, to his own order, and endorsed by him, secured by a trust deed made by H. H. Walker to Henry Waller, of same date, of E. 30 acres of N. 120 acres of N. W. ¼ S. 6, T. 38, N. R. 14 E., which note falling due and remaining unpaid on the —— day of ——, complainant filed a bill in the Circuit Court of Cook County, Illinois, to foreclose the same (suit No. 12,111), and such proceedings had that on 23d December, 1874, a decree of foreclosure was entered; amount then due, $36,107.17. Premises ordered sold. No appeal therefrom, and decree in full force. No part of note or decree paid.

A note by H. H. Walker, date June 19, 1869, for $10,000, at one year, to his own order, and endorsed by him, secured by trust deed made by H. H. Walker to F. A. Hoffman, of

W. ½ of W. ½ of N. W. ¼ of S. E. ¼, S. 25, T. 39, N., R. 13 E. 3rd P. M.

Sets out payments made on the principal notes.

That interest has been paid on the said principal notes as follows: 1, up to October 1, 1873; 2, to October 28, 1873; 3, to October 12, 1873; 4, 5 and 6 to October 17, 1873; 7, 8, 9 and 10, to October 26, 1873; 11, to October 22, 1873; 12, to October 21, 1873; 13 and 14, to November 14, 1873; 15 and 19, to November 11, 1873; 18, to October 19, 1873; 20, to November 17, 1873; 21, to March 21, 1874, and 22, to March 30, 1874.

That no interest had been paid on any of the collateral notes, except as follows: Jacob Dommermuth, up to March 24, 1874; Francis A. Riddle on his note of $5,200, date February 15, 1874; $2,500 paid August 20, 1874; Dennis McQuid to June 22, 1874; William Kerrigan to October 22, 1873; C. Wandersee to February 24, 1874.

Interest had been paid on notes held as general collaterals as follows: F. Kusen up to September 27, 1874, and $100 of principal; J. McQuade up to September 23, 1874; C. Manske to September 10, 1874; F. Boehm to October 24, 1873, and upon the note falling due two years after date, $800 paid on principal October 13, 1874; Bradford to April 29, 1874; Baldwins to June 1, 1872.

That said S. J. Walker was indebted to complainant upon notes as above set out, subject to deductions of payment as above stated, according to their tenor and effect, as set out. That no judgments had been had thereon against S. J. Walker, except as above stated. That all of said indebtedness was then due and payable. That complainant was the *bona fide* holder of all collateral securities above mentioned for the purposes mentioned. That no judgment was had on said collaterals except as stated. That complainant was fully authorized to sell collaterals aforesaid by virtue of the power of attorney in said principal notes of S. J. Walker to it. That it was empowered to sell and dispose of all said collaterals, both general and special, by agreement between S. J. Walker and itself, and apply proceeds toward payment of the indebtedness due it from Walker. That various parties were interested in proceeds of said collateral notes and trust deed, viz.: Leopold Miller, Jacob Liebenstein, C. Edward Schoelkopf, Augustus Bauer, Joseph Austrian, Edward Koch, Henry A. Kohn, Joseph A. Kohn, David A. Kohn and Julius A. Kohn.

That complainant was anxious of having an account

stated between S. J. Walker and itself, and of having all said collaterals sold and disposed of under the order of this Court, and the money produced or realized thereby applied to the payment of the indebtedness of S. J. Walker to it, but S. J. Walker refused to come to a settlement with it or to have said collaterals sold or disposed of in accordance with the agreement between them.

Prayer: Answer without oath that a decree might be entered fixing and establishing amount of indebtedness due by S. J. Walker to complainant and for sale of all collateral securities pledged to complainant, proceeds applied upon indebtedness of S. J. Walker to it and surplus distributed as to justice and equity might appertain and for further relief, S. J. Walker and Miller, Liebenstein, Loewenthal, Schoelkopf, Bauer, Austrian, Koch, and the Kohns, made parties and process prayed against them.

A note by Henry E. Pickett for $2,374, date July 31, 1873, at five months, to order of, and endorsed and guaranteed by said Walker.

A note by Henry H. Walker, $25,000, dated Covington, January 16, 1868, at eighteen months, to his own order, and endorsed by him, secured by a trust deed made by H. H. Walker to Henry Waller, of same date, of E. 30 acres of N. 120 acres of N. W. ¼ S. 6, T. 38, N. R. 14 E., which note falling due and remaining unpaid on the——day of——, complainant filed a bill in the Circuit Court of Cook County, Illinois, to foreclose the same (suit No. 12,111) and such proceedings had that on 23d December, 1874, a decree of foreclosure was entered; amount then due, $36,107.17. Premises ordered sold. No appeal therefrom, and decree in full force. No part of note or decree paid.

A note by H. H. Walker, date June 19, 1869, for $10,000, at one year, to his own order, and endorsed by him, secured by trust deed made by H. H. Walker to F. A. Hoffman, of W½ of W½ of N. W¼ of S. E¼ S. 25, T. 39, N. R. 13 E. 3rd P. M.

Sets out payments made on the principal notes.

That interest has been paid on the said principal notes as follows: 1, up to October 1, 1873; 2, to October 28, 1873; 3, to October 12, 1873; 4, 5 and 6, to October 17, 1873; 7, 8, 9 and 10, to October 26, 1873; 11, to October 22, 1873; 12, to October 21, 1873; 13 and 14, to November 14, 1873; 15 and 19, to November 11, 1873; 18, to October 19, 1873; 20, to November 17, 1873; 21, to March 21, 1874; and 22, to March 30, 1874.

That no interest had been paid on any of the collateral notes, except as follows: Jacob Dommermuth, up to March 24, 1874; Francis A. Riddle on his note of $5,200, date February 15, 1874; $2,500 paid August 20, 1874; Dennis McQuid to June

the bill. That the defendant is desirous of having collateral securities sold and disposed of and proceeds applied to payment of indebtedness due him from S. J. Walker upon said note. He prays his interest in said securities may be protected.

Answer of "H. A. Kohn & Bro's.," filed Feb. 17, 1875.

Saving exceptions, says they are the owners of notes described in bill of complaint, No. 2,519 for $3,500, No. 2,522 for $5,000, No. 2,716 for $5,000, and No. 2,714 for $3,000.

That S. J. Walker to secure them pledged with said bank from whom defendants acquired them by purchase, three notes of a series of 13 notes, each $7,500, secured upon premises described in a bill by trust need to Rosenthal, No. 4 of series to secure Nos. 2,519 and 2,714, No. 6 of series to secure No. 2,522, and No. 8 to secure No. 2,716. That the principal notes so held by the defendants are due and unpaid and collaterals due and unpaid, and they are satisfied to have collateral security sold and proceeds applied to the payment of indebtedness of parties secured thereby according to their respective rights and interests.

Answer of C. E. Schoelkopf, filed Feb. 17, 1875.

That he is the owner of two notes, Nos. 2,010 and 2,011 each for $5,000, described and set out in the bill. That same collaterals that were pledged to secure notes of complainant, Nos. 2,009 and 2,013 as set forth in the bill, were also pledged to secure said notes of defendant as admitted in the bill. Notes are due and unpaid. That he is entitled to collaterals disposed of and proceeds applied to payment of his notes and the others described in the bill for which they were pledged in a *pro rata* manner, and asks that proceeds of collaterals be distributed according to equity and justice.

Answer of Leopold Miller and Jacob Liebenstein, filed February 20, 1875.

Admit the execution of the note thirdly set out in the bill and of the collateral security and its delivery to the complainant, and that it was held by the complainant for the

purposes in the bill set out, and also admit the execution of another note which has been indorsed and transferred to them, (copy set out), No. 1018 B., dated Chicago, June 19, 1871, for $4,000 at 60 days, without grace, to the Int. M. T. Co., and reciting the deposit to secure it and another note for $3,500, the note of H. H. Walker for $10,500, dated August 18, 1870, secured by trust deed. That the collateral securities in bill described as pledged to secure payment of 3d note in bill were pledged to secure that note and the note of defendants last above set out.

Answer of B. Loewenthal. Filed February 20, 1875.

Admits execution and delivery to complainant of note the 7th, in bill described. Also admits the execution, indorsement, pledge and delivery of collateral securities for payment of the 7th note seventhly described and other notes as in bill stated. That he is the owner of the principal note No. 2008, made by S. J. Walker and delivered to the bank and by it for a valuable consideration *bona fide* sold to him, the defendant. Sets out a copy of a note for $8,750.

That it and the other notes of even date given to the bank and described in the bill are all equally secured by the notes aad trust deeds referred to in the bill as pledged by S. J. Walker to secure the payment of said 7th note and the other notes therein referred to. That said $8,750 is owned by him, the said defendant, and is due and unpaid. He asks that out of proceeds of said collateral securities, when sold, the debt of Walker to him upon said note may be fully paid, and such proceeds may be distributed according to equities of parties. That S. J. Walker is also indebted to him in a large sum of money. That to secure its payment Walker pledged to him one of the series of 13 notes, No. 7, for $7,500, secured by trust deed to Rosenthal, set out in bill. If said collateral is sold under order of Court, defendant is entitled to his share thereof and asks protection of the Court.

Cross-bill of Austrian, Bauer, the Kohns, Loewenthal and Koch, filed March 11, 1875.

That they are the owners of the notes set out in the original bill, and Walker is indebted to them as therein charged; that they respectively hold the collateral notes as charged therein. That the principal notes are all due and payable, and Walker refuses to pay them. That they are entitled to have collateral notes sold and disposed of, and proceeds applied to payment of the principal notes.

Prayer, that S. J. Walker may answer without oath. That a sale of the collaterals, by the order of the Court, may be made and he barred and foreclosed of all equity of redemption in said collateral notes, and for other relief, and a rule on S. J. Walker to answer cross-bill.

Order April 22, 1875, on S. J. Walker, to answer above cross-bill in twenty days.

Answer to original bill by S. J. Walker, April 29, 1875.

Denies that he is indebted to the complainant in any sum whatever, and so it would appear if a full, fair and equitable accounting could be had between it and him, but admits that complainant has a large number of notes, made by him and others, which he delivered to it as security for the payment of money borrowed under the circumstances thereinafter set out. That he signed papers presented by them without examination as to their correctness, and they may contain agreements to pay extortionate rates of interest as liquidated damages.

That in 1868, he commenced doing business with said bank, then known as the "International Mutual Trust Company," and continued doing so down to 1874, during which time he was extensively engaged in buying and selling real estate, and borrowed money from the complainant and gave it his own notes, and those of H. H. Walker, and so far as made by H. H. Walker, they always were for his, S. J. Walker's, accommodiation solely.

That during that time he executed notes, secured by trust deeds, to secure the notes upon which he borrowed money, so that in many instances the complainant held duplicate obligations for the payment of the same sum of money, the collateral security being in most cases much larger than the sum actually borrowed.

That though many of the notes made by him have been paid by application of collaterals specifically pledged, yet complainant has for the most part retained the notes and other securities given to it by him, and claims and pretends that they are unpaid.

"And this defendant, further answering, insists and states it to be true, that all, or nearly all, of the loans of money made by this defendant from the said complainant were made under and in pursuance of an unlawful, corrupt and usurious agreement and understanding between the said complainant and this defendant, to the effect that this defendant should pay to the said complainant for the loan and forbearance of said money, interest thereon at and after

the rate of one and a half and two per cent. per month and upwards, and all extensions and renewals of said loans were made and secured upon agreements for and actual payments of similar rates of unlawful and usurious rates of interest."

That he is not able to give any particular description of his own notes and those of others given to complainant in the course of his dealings, nor whether those set out in bill are correctly copied, but denies that he is either equitably or legally indebted to it in the aggregate amount of said notes set out in the bill. That he is entitled to large credits upon said notes for payments made thereon, and also for other large sums paid it over and above the lawful rate of interest for the forbearance of money loaned to him by it upon said notes in pursuance of the said unlawful, corrupt and usurious agreements, and which sums should in equity and good conscience be credited to him upon the principal of said loans as they from time to time were made by him.

That he kept a bank deposit account with it, in which he from time to time deposited large sums of money, checks, etc., and in which he frequently deposited the proceeds of loans to him by it. That such deposits in the aggregate amounted to many millions of dollars; that such sums are not properly credited to him. That various deposits were entirely withheld from said account and others credited at less than the amount actually paid in. That in addition to the regular and proper charges against him, complainant made against his account various other unusual, unlawful and improper charges without his consent. That the bank neglected to furnish him with a regular bank pass book, and he having then full confidence in the good faith and integrity of the complainant, its officers and agents, trusted it to make full and accurate entries in his accounts. That so relying upon it he did not, during the progress of his dealings with it, keep any proper or accurate record or memoranda thereof, believing that the same could be had from it upon request, and what he did keep prior to the fire of October, 1871, were destroyed in that fire. That without the assistance of said complainant he has at all times been unable to determine the condition of his said accounts, and being always occupied with the trades and negotiations incident to his business, he found no opportunity to investigate the same until the panic of September, 1873, by which he was greatly embarrassed in

common with others, who had been largely engaged in the buying and selling of real estate.

That papers were presented to him by it as partial settlements of his accounts, and some of them may have been indorsed by him as correct, but if so, it was done without examination by him and solely upon the representation of said complainant that they were correct and with the intention of investigating the same at some future time. That he also gave the complainant checks for which he received nothing, the officers of the bank representing that they were necessary to the adjustment of his account, which amount to many thousand dollars. That they were obtained from him te cover up and conceal the improper, unlawful and extortionate charges made by it against him and to use them as vouchers in settlement when otherwise large balances would appear in his accounts to his credit. That Bank well knew that he was dealing with it in a very careless and unbusiness-like manner, relying upon their good faith and integrity; that he had no full or sufficient record of his transactions with it, and no bank book showing the amount of his various deposits, and that its officers wrongfully and fraudulently made use of such knowledge and of his confidence in their honor and integrity to make said improper, unlawful and extortionate charges against him, and to procure his signature and apparent admissions thereto and vouchers therefor, expecting that no investigations thereof could or would be had, and that the results of their fraudulent practices would ultimately be acquiesced in by him. That he had recently applied to the Bank and requested of it a statement of his accounts and dealings with it, and a return, or at least an inspection of the checks, receipts and other papers relating to his accounts in its possession, and also permission to examine his accounts upon its books and the said checks, receipts and papers in connection with an experienced accountant, for the purpose of preparing a statement of his said accounts and dealings, at his own expense, but the bank has declined to grant any of said requests, sometimes pretending that its books are imperfect, portions mislaid or could not be found; that its accounts with him were incomplete and in great confusion, so the just balance could not be determined thereby within a large sum viz: $200,000, but he charged that all the books of the bank relating to its accounts and dealings with him were in its possession and control, and that they would, unless fraudulently changed and altered, show in what manner the transactions between the

bank and him had been conducted, and would enable him to point out and show the improper, illegal and extortionate charges made against him by it, and that by means of the books and the checks, receipts and other papers in possession of said complainant, the accounts between it and him could be fairly and equitably adjusted. That a careful investigation of the accounts would show that he is entitled to off-set against the pretended claims of the complainant against him, a very large sum of money; that he had paid complainant "for the loan and forbearance of moneys upon unlawful, corrupt and usurious agreements therefor, the sum of at least $400,000 over and above the lawful rates of interest under the Statutes of the State of Illinois, which sum should be credited to him upon the principal of the claims presented against him by it in said bill. That it is also indebted to him in the further sum of $200,000, which he is entitled to off-set against any just claim of the complainant, which sums are largely in excess of his notes set out in the bill.

Denies he has ever refused to come to an accounting; has frequently by himself and others sought to obtain one, based on an inspection of the books, papers and vouchers, which it has always refused, insisting that he should accept as final and conclusive, a fixed result presented by it, showing a large debt from him to it. That he is willing to have an accounting, and upon surrender of his notes, etc., in the hands of the complainant, to pay it what shall upon such accounting appear to be due to it.

Cross-bill of S. J. Walker, filed April 29, 1875, after usual formal introduction, charges:

That he has for the last fifteen or twenty years been extensively engaged in the business of buying and selling real estate in, and in vicinity of Chicago, in which, and the business incident thereto, his transactions have amounted to many millions of dollars. That in the course of that business he has been a borrower of large sums of money upon his own notes and those of other parties, secured by mortgages and deeds of trust of real property. That his transactions as a dealer in real estate, some time about 1868, made him acquainted with officers of said International Bank of Chicago, there known and under name of International Trust Company, and shortly thereafter he opened a bank account with said company, in which he from time to time deposited large sums of money against which he drew checks and drafts in the manner usual between banks and their

depositors. That about that time he became a borrower of money from said company upon terms, conditions and securities agreed upon between them, and hereafter more fully explained. That at times the moneys so borrowed by him of said company were unpaid at their maturity, and at other times said loans were extended, or renewed by mutual agreement, the terms for such renewals, or extension, being arranged for in each case by him with said company.

That from the commencement of his dealing with said International Bank, then known as International Trust Company, as aforesaid, up to the time of the Chicago fire of 8th and 9th October, 1871, said dealing had gradually increased, and, at that date, said bank, or company, held a large amount of his obligations and securities, but the actual amount thereof, or upon what special pledges the same were held, he is now wholly unable to state, for the reason, amongst others, that nearly all his books, papers and memoranda relating to his said dealing with said bank, or company, prior to that date, were destroyed by said fire in the office then occupied by him.

That he continued to do business with said company and bank after said fire, both as a depositor and borrower of money, until some time in 1874, when in consequence of the financial panic of September and October, 1873, he, in common with others, became seriously embarrassed in his operations, and being unable to realize funds as theretofore upon his property and securities, was forced to suspend payment of his own obligations, and, among others, those held by said bank.

That his dealing with said bank, whether as a depositor or a borrower of money, were conducted on his part, from the very beginning thereof, in a very careless, loose and unbusiness-like manner, and with the most implicit reliance upon the good faith and integrity of said bank, its officers and agents. That he kept no regular or connected account of his deposits with said bank, or of the checks drawn by him against the same; neither did he run at any time, have or use the ordinary bank pass-book, such as is usual between banks and bankers and their depositors, in which his deposits were or could be entered from time to time as made, the officers and agents of said bank representing that such a book was useless, and refusing to furnish same to him.

Neither did he keep any account or sufficient record of his notes and obligations upon which he negotiated loans

from said bank, or of the collaterals deposited as security for same, so that he, after his suspension as aforesaid, was wholly unable, from anything in his possession or control, to prepare any statement of his dealings with said bank, or to ascertain the condition of his accounts therewith, and the said bank its officers and agents, knowing his comparatively helpless condition in that behalf, and designing, as he fears and charges, to take improper and undue advantages thereof, absolutely refused when requested by him to exhibit the books of said bank, and the vouchers and papers in its possession, relating to his account and dealings, or to allow him to see or examine said books and papers, or to furnish him with any full or sufficient statement or transcript thereof, but insisted, and has ever since continued to insist, that he should pay certain of his notes and obligations held by said bank, and that he should, without investigation of his accounts, in any manner accept as conclusive their verbal declaration that his deposit account with said bank was balanced, and that he was largely indebted to said bank for money loaned, representing said debt as amounting to about the sum of $200,000, evidenced by certain of his notes and obligations, and notes of other parties held by said bank.

That in the course of his said dealings with said bank, under its present and former name, various statements have from time to time been presented to him, purporting to represent the condition of his account with said bank, which statements the officers and agents of said bank then requested him to certify as correct, and he has frequently, in like manner, been requested to sign checks upon said bank, filled up for large amounts upon the pretense that such checks were necessary for the balancing and settlement of his account with said bank; that he has from time to time and without any investigation of his accounts with said bank, signed such statements and checks so presented to him, reserving, however, at all times, the right to inquire into the correctness of the representations made as an inducement for so doing, all of which statements and checks and all other vouchers and papers relating to his dealings with said bank have been retained by said bank and are in its possession and control. And that although said bank claims and pretends that he is largely indebted to it as above stated, yet upon a fair, full and equitable settlement between him and said bank it would appear that there is nothing whatever due to it from him and that all the notes,

obligations, and securities received by said bank in course of its dealing with him and which it now holds or should hold in its possession, ought, in equity, to be surrendered and delivered up to him. And that the money and other funds deposited by him in said bank have not been correctly entered in his account and to his credit, but that he has been, from time to time, and on various occasions, credited in his account with much less than the sums actually deposited by him. That improper, unreasonable, and extortionate charges were made against him in said accounts without his authority, knowledge, or consent, in the aggregate amounting to many thousands of dollars. That the charges so made were not those usually made by banks or bankers against their customers and he therefore had no reason to suspect or anticipate the same. That they were made arbitrarily and for the purpose of cheating and defrauding him; the officers and agents of bank well knowing the insufficiency of the records kept by him of his transactions with said bank, and therefore expecting and believing that the said unusual, improper, and exorbitant charges would be wholly undiscovered. That the statement exhibited from time to time for his signature and approval as aforesaid and checks presented ready filled for large amounts and which, relying upon the good faith and integrity of said bank, its officers and agents, and their representations that the same were necessary for the adjustment of his account, he, in many cases, actually signed as aforesaid, were prepared for the purpose of obtaining his ratification of said unusual, improper and extortionate charges and procuring evidence by which to stop him from inquiring into the correctness thereof, and for same reason and with a like purpose the said bank, its officers and agents have always refused to render him any full and complete statement of his accounts with said bank in which the items should appear in their order, or to return to him his checks and drafts upon said bank, or to permit any examination by him or by any one on his behalf of the books of said bank and the vouchers in its possession, and has insisted and still does insist that he shall accept as conclusive the statement of said bank, that he is indebted to it as before mentioned; that the aggregate amount of said unusual and improper and extortionate charges so made against him in his account with said bank, without his authority, knowledge or consent, is fully equal to all his alleged debt to said

bank set forth and claimed in said original bill by said bank against him.

That in making loans from said bank and Trust Company, he frequently executed to it his notes and obligations for much larger amounts than were actually received by him, so that the notes held by it did not at any time correctly represent the amount of his actual debt; that for a long time he paid the loans made by him of said bank at maturity, but notwithstanding such payment, the notes and obligations given therefor were still retained by said bank, and in many cases have never been surrendered to him, and in that way his apparent debt to said bank has been duplicated or greatly increased. That he at various times has renewed the loans made by him with said bank, giving new notes and obligations therefor, the said bank still retaining the old notes and obligations uncancelled, and refusing upon one pretext or another to deliver them to him. That officers of said bank from time to time procured him to sign certain papers prepared by them or at their instance, pretending that the same were necessary in the transactions between him and the bank, and which he signed at the time without examination or knowledge of their contents, but which he has since learned authorized said bank to retain all the securities which have from time to time or which might be deposited by him with said bank as general collateral to any and all of his indebtedness to said bank, however the same might originate, and by taking advantage thereof, said bank added greatly to his difficulties and embarrassment, the effect thereof being to tie up and incumber a very large amount of the property and securities of complainant, and to keep the same beyond his reach and control, after the debt for which they were specifically pledged had been actually and fully paid. That, as near as he can ascertain, the securities therewith held by it amounts to upwards of $300,000, and control and render unavailable to him a large amount of real estate which he might otherwise use to pay his real debts and relieve himself of his financial embarrassments.

That all the loans made by him of said bank as aforesaid, have been made upon and in pursuance of certain unlawful, corrupt and usurious agreements made and entered into, by and between said bank and him, to the effect that he should pay the said bank a rate of interest for the loan and forbearance of said money greater than that allowed by the statute of Illinois.

That the rates of interest for the loans and forbearance of money so agreed upon, as aforesaid, varied at different times, the extent of such variation being from one and a half to three per cent. per month, the greater portion of said loans being made to his recollection and belief at the rate of two per cent. per month. That he actually paid to it in pursuance of the unlawful, corrupt and usurious agreements aforesaid, interest upon the said money for loan and forbearance thereof at, and after the rates aforesaid. That the unlawful and usurious interest thus paid to it by him in his dealings and transactions with it as aforesaid, amounted to at least $300,000, which under the law, and according to equity and good conscience, should be applied to the payment and satisfaction of the principal of said loans made by him of it. That he is wholly unable to specify the items of unlawful and usurious interest so paid by him to it for the reason he has no certain or sufficient memoranda, or record of same; that the same was usually paid by checks, many of which were drawn against his account with said bank, and all such checks are in possession of said bank or its officers who refuse to give him access thereto, or an inspection thereof. That an examination of the books of said bank relating to his dealings with it, and of the checks, notes, memoranda, securities and other papers in the possession of the said bank is absolutely necessary to enable him to ascertain and set forth in detail the times and amounts of such payments. That he has on various occasions applied to the bank and its officers and requested of them permission to inspect his account on its books, and the notes, checks and other vouchers held by it and relating to said account, and has also requested of said bank the privilege of preparing a statement from said books and papers, or that said bank would cause such statement to be prepared for his use, but such his request has been at all times refused; at times upon the pretense that his accounts in said bank were imperfectly kept, and said account could not be adjusted by said books, or the true balance ascertained thereby within $200,000; at other times it has been pretended to him that it was impracticable to make a statement of said account, on account of its great length and the involved and complicated character of the dealings between him and said bank, but he charges that said pretenses are untrue, and that the books of said bank, unless they have been altered for improper and fraudulent purposes, must and do exhibit the items, and facts of his accounts and dealings

with said bank, so that any competent accountant can, by means thereof, and assisted by the vouchers and other papers in possession of said bank, fully understand the same, and his account with said bank can be made out and stated with approximate accuracy, at least, and that, too, notwithstanding the great length of said account, and the complication of the dealings out of which the same originated.

That the same bank claims and pretends that it has sold and transferred to Leopold Miller and Jacob Liebenstein (firm of M. and L.), Berthold Lowenthal, C. Edward Schoelkopf, Augustus Bauer, Joseph Austrian and Edward Koch, and to Henry A. Kohn, Joseph A. Kohn, David A. Kohn and Julius A. Kohn (firm of Kohn Bros.), a portion of the notes and securities which it received from him for the loans so made by said bank to him as aforesaid; that they, or some of them, claim to be *bona fide* holders of said notes and securities, without notice of any of the equities affecting the same in the hands and control of said bank; but he charges that such sales and transfers, if any have been made, are mainly colorable and were subsequent to the maturity of the notes or other obligations so transferred, and that said parties to whom such sales and transfers are alleged to have been made, were stockholders and officers of said bank, and were well acquainted with the manner in which the business of said bank with him was conducted, and had full information of the usurious character of the transactions in which said notes originated, and of all his rights and equities in respect thereto as above set forth, and that he is entitled to the same relief in respect to said notes and obligations in their hands as though they had continued in possession of said bank.

That he had well hoped that said bank and the other aforesaid parties would have come to a reasonable settlement and understanding with him respecting his account and dealings with said bank, and given a full and correct statement thereof from books of bank, and vouchers and other papers in its possession, or permitted him to examine, and that bank would have rectified all mistakes in account, and correct all entries improperly made, crediting him with full amounts of his deposits, and striking out all unusual, improper and extortionate charges made against him in said account, and surrender the vouchers, notes, and obligations and securities improperly held from him, and given him proper credit for all usurious and unlawful interest paid by him to said bank. But now, so it is, (charge of confedera-

tion) they have at all times refused, and still do refuse, to come to any reasonable and proper settlement and understanding with him, or in any manner to recognize his equitable rights in the premises, or to assisst him in any way in procuring a proper and accurate statement of his account and dealings with said bank; at times pretending that he had no right to a statement of said account and dealings, or to any examination of the books and vouchers relating thereto in the possession of said bank at other times; that he had at all times received proper credit for his deposits with said bank, and that no unusual, improper or extortionate charges had been made against him in his account with bank, and that he is not entitled to any deduction on account of such charges; at other times, that he has not paid bank any usurious and unlawful interest upon money borrowed by him of bank, and is therefore not entitled to credits for such payments. That he is indebted to bank in full amount of notes held by it, and set forth in its said bill, which it seeks thereby to enforce against him and the securities held by it; the contrary of all which he charges to be true, and that he is entitled to a full and fair statement of his account and dealings with said bank from the beginning thereof from books, vouchers and other papers relating thereto in its possession, and to an inspection thereof, for the making or rectifying such statement. That he has not been properly credited, for deposits; has been charged with large sums not received by him, or used for his benefit; that unusual, improper, and extortionate charges have been made, and fraudulently so made to his prejudice; that he has paid bank a large sum of money for usurious interest upon money borrowed by him from bank in pursuance of unlawful agreements between bank and him, amounting in aggregate to $300,000, as he believes. That the amount thereof with improper charges and what should be credited back to him, is greatly in excess of any and all just claims which said bank has or ever had against him, all which acting, etc.

Prayer. Answer without oath. That the said bank and Berthold Loewenthal, its president, may set forth and exhibit a full, true and accurate account and statement of all his dealings with said bank, both as a depositor of money with it and a borrower therefrom, giving particulars and items thereof as the same occurred from the beginning of said transactions down to the present time, and showing the various items of debit and credit in said account with said bank, and that they may be compelled to produce all the

books, vouchers and papers in its possession for the verification of such statement and for examination by him. That proof may be taken concerning the facts alleged against bank and its officers and agents, and of the unusual, improper and extortionate charges made against him in his account with it, and of amount of unlawful and usurious interest paid by him to said bank for loan and forbearance of moneys, also to set forth and show in full details the notes and obligations of complainant held by said bank and amount claimed to be due thereon, also what payments have been made thereon and what collaterals or other securities are held by said bank for payment of same, and how much, if anything, has been realized on said securities, and what judgments or decrees have been taken thereon, and that in the meantime and until the further order of court, defendants and each of them may be enjoined and prohibited by writ of injunction, out of and under seal of court, from settling, transferring or in any manner disposing of notes or obligations of complainant or any or either of them now in their custody or possession, or any notes or obligations of other persons received by them or either of them from him or any of the securities held by them or either of them for the payment thereof, and that an account may be made and stated under order of court between him and said bank, and that the unusual, improper, and extortionate charges made against him by it, and the usurious and unlawful interest paid by him to it may be allowed him in said account and be off-set against any just and proper claims, if any, which said bank may establish against him, and if upon such accounting the balance is found in favor of him, said bank may be decreed to pay same to him, and also to surrender and deliver to him all notes, obligations and papers, vouchers and securities of every kind which it has or controls belonging to him, he hereby offering to pay said bank what, if anything, may be found to be due from him to said bank upon such accounting, and for other and further relief.

For writ of injunction as above prayed for, summons against the International Bank, Berthold Loewenthal, C. Edward Schoelkopf, Leopold Miller, Jacob Liebenstein, Augustus Bauer, Joseph Austrian, Edward Koch, Henry A. Kohn, Joseph A. Kohn, David A. Kohn and Julius A. Kohn.

Demurrer to the cross-bill of Walker by all the defendants named in it, filed June 5, 1875.

Order June 15, 1875. Demurrer to cross-bill of Walker withdrawn and defendants have ten days to answer.

Answer of the Bank to Walker's cross-bill, filed June 29, 1875.

Admits Walker, about the beginning of 1869, opened bank account with it and made deposits, drew checks and drafts in the usual manner, became a borrower of money from it upon securities deposited with it, of various kinds and descriptions. That he sometimes repaid the money thus borrowed at maturity, and at other times such loans were extended or renewed. That often prior to fire of October, 1871, and afterwards, "it furnished Walker with statements of the obligations, securities and collaterals held by it of him, the said Walker." Admits that he continued to do business with it until he suspended, sometime in 1874. That he was not as careful in his manner of conducting his business with said bank as was customary with most business men, but whether such carelessness resulted from confidence and reliance upon its good faith and integrity it does not know, but believes that his habits as to his dealings with it were not different from those with other banks in Chicago. That Walker did place confidence and reliance in the good faith and integrity of this defendant, and alleges that they have not been misplaced or in any way abused; that all its dealings with him have been conducted upon strict business principles, and have been honest and just. That he kept no regular or connected account of his deposits with, or of his checks against it. That he did not keep what is known as a bank book or pass book with it, but that his not keeping it, was not in consequence of representations by it made to Walker, that it was useless. That he refused to have or be incumbered with one, alleging that it was impossible for him with his business to keep one, and that it was wholly his fault he did not have or keep one with it. It was always willing to furnish him with it.

Denies that Walker, after his suspension, was unable to ascertain the condition of his account, alleges it furnished him every opportunity, and furnished him statements at various and divers times concerning the condition of his account with it. Denies it ever refused to exhibit its books, vouchers and papers to him. Alleges Walker is not a practical book-keeper, and it would be utterly futile to permit him to examine the books of the bank in person, but denies he ever demanded the examination of them, either by himself or an expert.

That Walker's bank account has been balanced; he has no balance due him from it, and that he is indebted as charged in the original bill.

That the accounts have been frequently gone over and explained by its officers to Walker and a complete statement made to him. That Walker had at such times a full understanding of the statement so made and did then and there come to an accounting with the bank, and such accounts were stated between them and releases executed. That it had settlements with him at various times, namely, Sept. 1, 1870, concerning checks, deposits and discount account, and a full release was then executed between him and the bank. On the 14th Sept. 1871, it had a settlement with him in full of all his claims against the bank and of interest account and commissions up to the 16th Aug. 1871, and he executed to it a release, under seal, of all his claims in respect thereto, and at that time a full statement was made to him of his accounts and a full understanding had by him of the same, and the release was in full, without any exception, limitation or reservation. That on the 7th July, 1873, it had another settlement with him concerning the bank or deposit accounts, including his discount account, including all matters from said last settlement down to that date, which was reduced to writing and signed by him and the bank, and they each released the other in full of all matters pertaining thereto. That on 31st July, 1873, they had a similar settlement, covering all matters since that of 7th July, 1873. That on 30th Aug. 1873, they had a full settlement and statement of the bank or deposit account and discount account, from the time of the last accounting up to that date, which account was balanced and each released the other in full as to all matters pertaining to said account. That on the 9th Nov. 1873, they had an accounting and a full settlement of the bank or deposit account and discount account, and the same was balanced, and they then and there each released the other from all matters pertaining to said account. On the 13th May, had a similar settlement and executed a similar release. That at the time of said respective settlements, a full statement was rendered him of the various items composing said accounts referred to, namely, said bank, or deposit account, and said discount and interest account, and a full understanding was had between them touching the same, and that all of

their transactions with reference to the deposits made by said S. J. Walker and with reference to all other matters, transactions and dealings between them have been settled, except the notes and obligations in said original bill set out and referred to and the securities pledged and deposited with the bank as therein stated. Offers to produce releases, that all of said accountings were made fairly, that all the transactions between them were fairly stated unto him by its officers, that no advantages of any kind were ever taken of said Walker in their various dealings, but that he always received credit for every cent he deposited with it, and was only charged with such sums of money as were just and fair, and as were in accordance with the agreements of the parties.

Denies all the charges in the bill as to Walker's accounts not being kept correctly by it, or improper, extortionate or unreasonable charges made or any not such as bankers usually make, or that any were made with the purpose of cheating him, or that any fraud was ever attempted on him because he would never discover on account of insufficiency of his records or upon any other ground, or that he signed checks or statements without a full knowledge of their correctness, or that they were prepared to obtain his ratification of improper or extortionate charges, or to produce a voucher that would estop him as to the correctness thereof, or that such statements were not full and complete statements, or that they were not itemized, or that such items did not appear in their order, or that it refused to permit examinations of its books, but that they were always open to him, and avers that said statements of account were conclusive upon him, and that he is indebted as in original bill set out.

Denies Walker furnished notes and obligations for much larger amount than he actually received.

Leaves him to prove that for a long time he paid loans made to him at maturity, but denies that upon payment it retained his notes uncancelled, or that his apparent indebtedness was duplicated or increased by non-surrender or non-cancellation of any evidence of indebtedness after same was paid. Admits that in some instances he may have given new notes to it on account of old debts unpaid; but denies that it retained such old notes uncancelled, or that it ever refused to give up on any pretext whatever.

That the general agreements signed by Walker with reference to the use of collateral securities so pledged with it

for specific indebtedness, after the satisfaction of said specific indebtedness, were executed by him with full knowledge of their contents, and from the very beginning down to the present time, he had full knowledge of their contents, and the same were taken by it in good faith and for the purpose of protection, and it is entitled to all of the collateral securities so held by it, no difference for what purpose specifically pledged, to meet and satisfy any and all indebtedness due, or to become due by him to it. That he continually acted upon said general agreement, and that loans to a large amount were made to him upon papers not secured by collateral security specifically pledged for that purpose.

Denies that it has ever received, or agreed to receive any usurious interest from said Walker, as in said cross-bill alleged, and denies ever having made, or entered into any usurious or corrupt agreement with him, as alleged, and all charges of fraud, and that the production of the books, papers, vouchers and memoranda in its possession are necessary to enable him to ascertain the amount due by him to it, or for the purpose of stating an account between them. That the prayer for the production of books, etc., is not of such a character as to entitle him to any relief in equity, and claims same benefit from this defense as if it had demurred to the cross-bill, and the usual general denial.

Answer of Loewenthal, Schoelkopf, L. Miller, Liebenstein, Bauer, Austrian, Koch and the Kohn Brothers to the cross-bill, filed June 29, 1875.

Deny that any of them except Loewenthal are, or ever were, stockholders or officers in the bank; that their interests in the subject matter of said cross-bill are as represented in the original bill and their answers thereto, and adopt the answer of the bank as their answer to the said cross-bill, and allege that the transactions between Walker and the bank are as therein set out. That whatever may be the truth as to the various transactions between the bank and Walker that they bought the negotiable paper of said Walker from the bank for a valuable consideration, before maturity and without any notice of any equity or defense thereto in favor of said Walker, and that they are respectively innocent *bona fide* purchasers for a valuable consideration, and that they are entitled to the application of all se curities, according to their respective rights as theretofore set out and a general denial.

The supplemental cross-bill of Samuel J. Walker, filed August 2, 1875, states that on the 5th day of June, A. D. 1875, he filed his cross-bill of complaint in said cause.

That Henry A. Kohn, Joseph A. Kohn, David A. Kohn and Julius A. Kohn constitute now, and for some years past have constituted, the firm of "H. A. Kohn & Bros."

That said "H. A. Kohn & Bros.," after said cross-bill was filed, caused to be published in the Chicago *Legal News*, a weekly paper published in said city, a notice (of which "Exhibit A," hereto attached, is a copy) in its issues purporting to be dated 5th and 12th of June, A. D. 1875.

That when original bill was filed said "H. A. Kohn & Bros." had notes and collaterals alluded to in said notice, or if not, the International Bank had them and afterwards transferred them to said "H. A. Kohn & Bros."

That the said two notes for $6,000 each, dated the 19th day of July, A. D. 1873, and due sixty days after date thereof (mentioned in Exhibit A, attached), were made and given by him to the said International Bank in the course of and as a part of the dealing and transaction set out at length in said cross-bill, and that the facts, matters and things in said cross-bill set out, touching such dealings and transactions are true as therein set out and alleged, and complainant in that respect refers to and makes said cross-bill a part of this petition and supplemental bill, and prays to have the same benefit therefrom as though he had set the same out fully and at length herein. That by reason of the several matters and things he had a full, ample and complete defense to said notes of $6,000 each, and to the whole thereof.

That he was not, when said cross-bill was filed, fully advised of what notes the said International Bank and the said "H. A. Kohn & Bros.," or either of them, claimed to hold against him, nor that they or either of them held the particular $6,000 notes referred to in said advertisement, and so could not, and therefore did not include them in his said cross-bill, by appropriate description thereof, but he claims and insists that they are within the charges contained in the said original bill and said cross-bill, and should be taken into the account in the settlement and adjustment of the matters of account and dealing between him and said bank, and that such notice states, and such is the fact, that said notes of $6,000 each, were in the hands of said bank when, and until after they matured, and therefore the said "H.

A. Kohn & Bros." received them, charged with all the defense and equities against them in the hands of said bank

That the said *Legal News* is a paper of limited circulation in the city of Chicago, has few or no subscribers as he is informed and believes, among the business men of said city outside of the legal profession, and at and during the time from the 5th to the 12th day of June, 1875, from the character of its circulation was not likely to give notice to persons dealing in securities, of the sale of the said collateral notes mentioned in it and so known as he believes to said Kohn Brothers when said notice was published. That he had notice of said proposed sale, and accidentally learned of said advertisement a few day before the 14th day of June, A. D. 1875. That he attended at the time and place therein specified, and caused notice to be given before any sale was offered, that he forbade the sale, and had a full and complete defense to the said notes and all of them, that notwithstanding such notice, the said notes of $12,500 each were put up together and not offered separately, and were pretended to be sold to one Simon Yondorf who was present, heard said notice given aforesaid, and that such sale of said $12,500 notes was made to the said Simon Yondorf, the pretended purchaser thereat for the benefit of the said H. A. Kohn & Bros., without any money being in fact paid, or if paid, yet in the same color or disguise, for the use of the said H. A. Kohn & Bros., that the said sale was a mere sham, and they still hold said notes and all of them, and so it will appear when all the facts and circumstances touching said pretended sale are made known to the Court.

That even if such sale were a bona fide one, yet the said notes of $12,500 each were at the time of said sale long past due, and the said pretended purchaser thereby took them charged with the equities and defenses of complainant against them in the premises.

That the said two notes of $12,500 so claimed to be held as collateral were not issued or put in circulation until at the time of giving said two notes of $6,000 each and there is and never was for the same any consideration other than loaning of the money or the dealing and transaction then and there negotiated between said bank and complainant, and that what upon taking an account between him and said bank shall satisfy and discharge or show a want of consideration in the premises touching said $6,000 notes ought to be, and he prays may be, deemed and taken and

so decreed by this Court to be a discharge of said $12,500 notes and of each of them.

That the consideration of the said two notes of complainant for $6,000 each, was the loan or forbearance of less than that sum of money, and that the obtaining at the same time on the same occasion and for the same consideration, of two other notes each for $12,500 made by him as a pretended pledged or collateral security therefor was an unconscionable advantage taken by the said bank of the condition and necessities of complainant and any power to sell said $12,500 notes as collateral given by him should be held and deemed void and without consideration as a cloak and device under and by means of which to obtain a greater than the legal rate of interest for the loan or forbearance of money, and be set aside.

That there appeared in the *Chicago Morning Courier* on the 29th day of July, A. D. 1875, a notice of which the following is a copy: *Trustee's Sale.* Whereas Samuel J. Walker and Amanda M. Walker his wife did by their certain deed of trust, dated May the 30th, A. D. 1873, and recorded in the recorder's office of the county of Cook and State of Illinois, in book 161 of records, page 586, conveyed to the undersigned, as trustee, the following described premises, situated in said county and State to-wit: blocks numbers eighty-four (84) and eighty-five (85), and the north half of blocks numbers ninety-one (91) and ninety-two (92) in the town of Canalport, being in section number thirty (30), township thirty-nine (39) north, range fourteen (14), east of the third (3) principal meridian which said deed of trust was given to secure the payment of four (4) certain promissory notes of even date therewith, for the sum of twelve thousand and five hundred dollars ($12,500) each, said notes being more fully described in said deed of trust, to which reference is hereby made.

And, whereas, default has been made in the payment of each and all of said promissory notes and the legal holder of two of the same has applied to the undersigned to sell said premises, now, therefore, in pursuance of the power conferred on me by virtue of said deed of trust, I shall on the third day of August, A. D. 1875, at one o'clock, P. M., at the north door of the City Hall on Adams street (the said north door being the one nearest to LaSalle street), in the city of Chicago, sell at public action to the highest bidder for cash, pursuant to the terms of said deed of trust, all the premises herein above described, and all the rights, titles,

benefits and equities of redemption of said Samuel J. Walker, and Amanda M. Walker his wife, their heirs and assigns therein.

JOHN G. ROGERS, Trustee.

MONROE, BISBEE AND BALL, Attorneys.

That said *Chicago Morning Courier* is not a newspaper of general circulation, nor such a newspaper as by the condition of said trust deed it is required that a notice of sale thereunder should be published in.

That the other two notes of $12,500 each, of the said four notes described in said trust deed were mentioned in said original bill, and were by complainant given to the said International Bank in the course of the dealings and transactions set out in said cross-bill, and hereinabove alluded to, and that the said bank had them in its possession or under its control, and they should be taken into the account in this suit, and that he, for the reason and by means of the several matters and things set out in said cross-bill, had a good and perfect defense to the whole thereof.

That the land and premises set out in said notice and conveyed by said trust deed are of great value, and worth the sum of $75,000 in cash.

And he is fearful that the said John G. Rogers will at the request and instigation of the said H. A. Kohn & Bros., or of the said pretended purchaser, Simon Yondorf, proceed to make a sale of said lands and premises under said notice at the time and place therein advertised, or will otherwise on some pretense or other, sell said lands under said trust unless restrained by the order of this Court from so doing.

Prayer; That the said John G. Rogers be enjoined from making under said trust deed any sale until further order, and that such injunction be made perpetual.

That in the account to be taken under the said original and cross-bill, the said notes both those for $6,000 each and those for $12,500 each be included and relief granted touching the same as in the premises he may be entitled to, and said notes surrendered and cancelled, and said trust deed released and discharged of record.

That said Internationel Bank, Henry A. Kohn, Joseph A. Kohn, David A. Kohn, and Julius A. Kohn, Simon Yondorf and John G. Rogers be required to answer this bill without oath, and the said Yondorf and Rogers said cross-bill without oath.

And the said bank, Henry A. Kohn, Joseph A. Kohn,

David A. Kohn and Julius A. Kohn, Simon Yondorf be enjoined and restrained from selling, assigning or disposing of said notes, or any of them, until the further order of the court for further relief.

Order for injunction endorsed on bill, as therein prayed for.

SALE OF COLLATERALS. (*Exhibit A.*)

Whereas, on the 19th day of July, A. D. 1873, Samuel J. Walker made and delivered to the International Bank of Chicago his two (2) certain promissory notes for the sum of six thousand dollars each, both dated upon the day aforesaid, and due in sixty days from said date, each of said notes was afterward extended by said bank until the 17th day of November, A. D. 1873, which extension has long since expired and said notes, and each of them, and every part thereof, are long since due and wholly unpaid.

And whereas said Walker, at the time when he so made and delivered said notes to said bank, deposited and left with said International Bank as collateral to secure the payment thereof and of each of them, two (2) other promissory notes bearing date May the 20th, 1873, payable to the order of said Walker (and by him indorsed) on or before fifteen months from their date, each for the sum of twelve thousand and five hundred dollars, with interest at the rate of eight per cent. per annum, the payment of which last described note (and two other notes of the same date and amount) was secured by a trust deed made and delivered by said Walker and Amanda M. Walker, his wife, to John G. Rogers, by which they conveyed to said Rogers blocks numbers eighty-four (84) and eighty-five (85) and the north half of blocks numbers ninety-one (91) and ninety-two (92) in the town of Canalport, being in section number thirty (30), township thirty-nine (39) north, range fourteen (14), east of third P. M., in the county of Cook and State of Illinois, and said Walker at the time he so deposited and left said collaterals with said bank, gave to said bank and to the legal holder or holders of said note herein first described, authority to sell said collaterals either at private or public sale upon the maturity and non-payment of said first mentioned notes.

Now, therefore, public notice is hereby given that on the 14th day of June, A. D. 1875, at the hour of 11 o'clock, A. M., of that day, the undersigned, the holders of said first mentioned two notes, at the north door of the Chamber of Commerce, in said city of Chicago, will expose for sale and sell to the highest bidder, for cash, said above described

securities, and each of them, and all the rights, titles, equities, and interest of said Samuel J. Walker therein.

H. A. KOHN & BROS.

Dated Chicago, May 31st, 1875.

Injunction writ against Simon Yondorf and J. G. Rogers, dated Aug. 3, 1875.

Answer of John G. Rogers to cross-bill, filed Aug. 17, 1875.

Admits the trust deed set out and denies all other allegations in the bill.

Answer of Rogers to supplemental cross-bill, filed Aug. 17, 1875,

Admits the trust deed set out, and denies all other allegations in it.

Answer of Simon Yondorf to cross-bill of S. J. Walker, filed Aug. 17, 1875.

Refers to his answer to Walker's supplemental cross-bill for his answer to the cross-bill.

Answer of Simon Yondorf to supplemental cross-bill, filed Aug. 17, 1875.

Admits that "H. A. Kohn Bros." caused to be published the notice set out in bill of which Exhibit "A" is a copy, and that at date of filing original bill they had in their possession the notes and collaterals mentioned in the notice, and that the bank did not then have them. Does not know whether the two $6,000 notes of date July 19, 1873, were made by Walker in the course of his dealings with the bank, but whatever that may be, Walker has no defense to them, or either of them, or any part thereof. That when cross-bill was filed, Walker knew the Kohns had said notes and owned them, and approached them frequently before that time with propositions for payment, in company with his solicitor, and had often set the day when he would pay said notes to them. Denies that they are within the charges of the original or cross-bill, or that they should be taken into the account in the settlement between the bank and Walker, or that the Kohns received them, charged with the equities of the said Walker against them in the hands of the bank. That the fact stated in the notice that the bank extended the payment of the notes is not true, and that such statement was a mistake of the scrivener who prepared the notice. That the Kohns in fact extended them, and not the bank. Denies that the *Chicago Legal News* is not the proper paper to advertise the sale of them in, or from the character of its circulation was not likely to give notice to persons dealing in securities of

the sale of said collaterals; avers that the notice of the sale was sufficient.

Admits Walker was present at sale, and that some one, but by whose direction he does not know, forbade the sale. The notice was duly read and bids called for; he had $5,000 and no one offered any more, and they were struck off to him for that sum. He paid at the time $500, and afterward the residue in currency.

Denies that the sale was made to him for the benefit of the Kohns, or that he took the notes charged with any equities in favor of said Walker, or that he knows anything about the consideration of the notes. Admits he caused Rogers to advertise land for sale under trust deed in the *Chicago Morning Courier*, from the 1st of July to the 3d of August, 1875.

That he knows nothing as to past or present ownership of the two other notes for $12,500, described in said trust deed.

That the facts of the case are that the Kohns, on the 4th of August, 1873, applied to bank to purchase unmatured commercial paper. That it then offered them two $6,000 notes, secured by deposit of the two $12,500 notes as collateral, and then and there they purchased them from the bank for $11,771.34, then and there by them paid to it, and the notes delivered thereupon to the Kohns. Deny all knowledge on their part of any defenses to the notes alleged in the bill.

That they are innocent, *bona fide* purchasers of said two notes for an adequate and valuable consideration before maturity, and he through them acquired at said sale a perfect title to the said collateral notes. General denial.

Answer of the Kohn Bros. to supplemental cross-bill of Walker, filed Aug. 17, 1875.

That whatever may be the truth touching the various transactions between Walker and the bank, they bought said notes in the supplemental cross-bill mentioned for a valuable consideration paid by them to it without and before any notice or any equity in favor of said Walker, and that they are innocent *bona fide* purchasers for a valuable consideration without notice, and had full power to sell said collateral notes at public auction to said Yondorf as is set forth in his answer. General denial.

Answer of S. J. Walker to cross-bill of Austrian and others, filed Aug. 31, 1875.

Denies that the complainants in that cross-bill are the *bona*

fide owners of said notes set out in it to have been transferred to them by the bank; that they are placed there as a mere cover and blind with some condition, reservation or secret confidence to conceal the true state of the facts, and with notice of the defenses thereto, and of such facts, and are held in reality for the bank.

Refers to the facts set out in his answer of the 29th April, 1875, as his answer to this bill to avoid prolixity of pleading.

Denies that they are entitled to the sale of said collateral notes or the lands covered by them, but, on the contrary, coming into a court of equity to enforce their equities under said pledge, in the nature of a mortgage, as the assignee of the principal notes for which they are held, they are in all respects subject to his equities touching said principal notes, and his defenses thereto, the same as though said principal notes had remained and were now in the hands of said corporation, and having set out in his answer a full and complete defense to said notes in the hands of said corporation, he is entitled to the same defense in their hands.

Amendments to the cross-bill and supplemental of S. J. Walker, filed by leave of the court, October 25, 1875.

That having in his possession and owning three notes, secured by trust afterwards alluded to, on or about the 22d of June, 1870, he applied to said corporation for a loan of about $15,000, upon an agreement to pay, and in fact paying therefor a greater rate of interest than ten per cent. per annum. The precise amount of money loaned, or of interest paid, he cannot state, and such loan, at such illegal and usurious rate, was extended and continued from time to time, upon the same rates of illegal interest, until on or about January 18th, 1873, when as one of such extensions and renewals of the balance due on such renewals, and having paid $2,500 on the loan, he made to said bank his note, dated that day, for $15,000, at 60 days, and in it recited that he had deposited with it, to secure payment of said note, the said three notes last above referred to, with power of sale should default be made for three days in payment of said principal note, of said collateral note. That said three notes held by him June 22d, 1870, and about that time, or subsequently, delivered to it as collateral, and in its possession when the principal note of January 18th, 1873, was made, are discounted with the trust deed, as follows: One note, dated June 22d, 1870, for $15,000, at one year, interest eight per cent., by H. H. Walker, to his own order,

and by him endorsed in blank, secured by trust deed to Hoffman, of same date, made by S. J. Walker and wife, conveying to Hoffman block 19 in S. J. Walker's subdivision of part of N. W. ¼ S. 31, 39, 14, with power of sale in default of payment of said note.

One note, same date, for $10,000, by H. H. Walker to his own order, in one year, at 8 per cent. interest, by him endorsed in blank, secured by a trust deed made by S. J. Walker and wife, dated July 21, 1870, to F. A. Hoffman, trustee, recorded, etc., and conveying lots 17 to 32 in block 2, and lots No. 1 to 27 in block 7 in subdivision of part of E. ½ of N. E. ¼ 36, 39, 13.

And one other note of said date, for $10,000 by H. H. Walker to his own order, in one year, with 8 per cent. interest, and by him endorsed in blank, secured by a trust deed of same date, made by S. J. Walker, recorded, etc., to F. A. Hoffman, trustee, conveying block 30, in S. J. Walker's subdivision of part of N. W. ¼ S. 31, 39, 14, with power of sale, in case of default in payment of said note. That the said notes and trust deeds are in possession of defendants, or some of them; prays for a full discovery and relief accordingly.

That being the holder and owner of certain other notes, viz: one for $65,000, dated April 16, 1873, made by E. C. Waller at 15 months, 8 per cent. interest, to order of complainant S. J. Walker, and endorsed by him to secure which Waller and his wife had made a deed to John G. Rogers as trustee, recorded, etc., conveying with power of sale, in default of payment of said note, lots 29–32 in block 1 of Sutton's addition, and also of one other by said Waller for $5,000, dated April 16, 1873, at 15 months, with 8 per cent. interest, to order of S. J. Walker and by him endorsed in blank, which was secured by a trust deed by said Waller and wife to J. G. Rogers, dated same day and recorded, etc., conveying to said Rogers with power of sale in case of default of payment of said note, lots 25–28 in said block 6, Sutton's addition. That so holding said notes and trust deeds, he, about the 23d of April, 1873, applied to said bank for a loan of money or for the forbearance of money then due, or soon to become due, and did obtain such loan or forbearance upon an agreement to pay, and in fact paying a greater rate of interest than 10 per cent. per annum, the precise amount of money loaned, and the precise amount of interest paid, he cannot state with certainty, but as near as he can, the sum loaned was $8,000 and interest, paid at

the rate of 24 per cent. per annum, and to secure said sum of money so borrowed at such illegal rate of interest, he made his note to said bank dated April 23, 1873, for $8,000 at 90 days, and did deposit said Waller notes and trust deeds for $6,500 and $5,500, all of which notes and trust deeds are in possession of the defendants or some of them.

That the dealings between him and the bank were exclusively the loaning and forbearance of money and keeping a deposit account, and no circumstances of any kind existed which in equity or good conscience justified the demanding or exacting any penalty or damages for non-payment of said notes other than the lawful rate of interest upon such debts falling due and remaining unpaid for the term they should remain unpaid. That the bank, as a cover and cloak, under which having obtained usurious and unlawful interest upon the loan or forbearance of money for which such notes were given to obtain interest at unlawful and usurious rates after they fell due, should he be unable or fail to meet and pay the same as they fell due, inserted a clause in all of the notes taken by it from him by which he agreed to pay large rates of interest after the lapse of some short date —from three days to ten days—sometimes twenty and sometimes twenty-four per cent., denominating it in them "as being agreed upon as the measure of liquidated damages for the non-payment thereof at maturity," preparing them for his signature and offering them to be signed as a matter of course, and thereby insisted upon such insertion as a condition upon which such loans alone would be made, and as such was taking an extortionate and undue advantage of him as a borrower or as owing money to said bank. That said notes were all made, using printed blanks containing the words above quoted, printed therein and otherwise filled up for the particular occasion, which blanks were in constant use by it in dealing with its customers in lending or extending loans of money to them. That the said agreement is merely in the nature of a penalty attached to the non-payment of each note, having no circumstance in the nature of the dealings and transactions between him and it, and out of which they respectively grew or accrued, which would render it equitable to enforce such penalties, and to enforce such penalties would be a great hardship and be taking an undue advantage of the wants and necessities of the complainant in the premises, and enabling said bank and its assignees to recover a greater rate of interest for the loan

and forbearance of money than ten per cent., contrary to the statute.

That after the maturity of the $15,000 and $8,000 notes given by him, dated 23d of April, 1873, the bank extended the payment of them to him upon his agreement to pay and paying interest at a greater rate than ten per cent. per annum, and finally, long after the maturity thereof, without any valuable consideration paid therefor, and with notice of his equities, made a pretended transfer thereof to said Kohn Bros., some of whom were then and for a long time prior thereto, had been stockholders, officers or agents, or otherwise pecuniarily interested in said corporation. That "Kohn & Bros.," afterwards, and without notice to him, caused a notice to be published in the *Chicago Post*, on or after November 12, 1874, of which Exhibit "E.," (p.), is a copy, and pretends that in and by said notice they described the first above described collateral notes, which inspection of the notice will show is not the case. That the bank and Kohn Bros. claim that the said collateral notes were by said Kohn Bros. offered for sale at time and place mentioned in said notice, and struck off and sold to Martin Clayburgh (made a party defendant to answer without oath), for some sum of money in cash paid, and they thereupon transferred and delivered the same to him, the contrary whereof is the case; and even if a sale were then made as pretended, it was made without sufficient notice, and was a mere sham and colorable, made in the interest of and for said "H. A. Kohn Bros.," with some understanding, secret or otherwise, without the payment of any money, and said sale so managed as to sacrifice the rights and interests of complainant.

That on 31st Dec. 1874, the bank and Kohn Bros. caused to be filed in the Recorder's office a paper writing, purporting to be a trustee's deed made by Rogers to H. A. Kohn, dated Dec. 24, 1874, under the powers in said deed of E. C. Waller and wife to him, dated April 16, 1873, and conveying the premises therein described, lots 25 to 28, block 1, Sutton's addition, to Henry A. Kohn for $3,000 bid therefor by him; that on 31st Dec., 1874, they also caused to be filed in said office a paper writing, purporting to be a trustee's deed made by said Rogers to H. A. Kohn, dated Dec. 24, 1874, under the trust deed made to him, Rogers, by said Waller and wife, dated April 16, 1873, and conveying the premises therein described, lots 29 to 32, in block 1, Sutton's addition, to H. A. Kohn for $3,000, the amount bid by him. That even if the sales were made as thereby pre-

tended, yet the Kohn Bros. were in fact at the time thereof the owners and holders of said notes and trust deeds, holding them as collateral for said $5,000 principal note, and knew of his defences to it in their hands and in that of the bank, and such sales and deeds only clouds on the right of complainant to redeem said lands; that he, H. A. Kohn, held the apparent legal title merely and only as collateral to said principal note; the firm so hold the same. That the notices under which the sale is made are set out as parts of the trustee's deed.

But on the 16th of February, 1875, said bank and Kohn Bros. caused to be filed for record a paper writing purporting to be a deed dated 15th of February, 1875, made by Francis A. Hoffman, trustee under the trust deed to him made by complainant and wife, dated June 22, 1870, and conveying the preimses therein described, lots 1 to 27 in block 7 to H. A. Kohn for $1,500, the amount bid by him and on the 15th day of February, 1875, they also filed for record a certain paper writing purporting to be a trustee's deed dated 10th of February, 1875, made by F. A. Hoffman to H. A. Kohn under the said trust deed made by the complainant to him, dated 22d June, 1870, conveying the premises therein described, block 19, in S. J. Walker's subdivision, to H. A. Kohn for $4,000, amount bid by him and on the 16th of February (1875) they also filed a certain paper writing, dated February 15th, 1875, purporting to be a trustee's deed, made by F. A. Hoffman to H. A. Kohn under the trust deed dated July 21st, 1870, made by complainant to him, and for the sum of $1,000 conveying to H. A. Kohn the premises therein described, lots 17 to 32 in block 2 aforesaid. That even if said advertisements and sales were made as pretended, yet Kohn Bros. were the real holders of said principal note of $15,000 and the said notes and trust deeds as collateral thereto; well knew of his defenses to the said principal note, and Clayburg in fact held the principal note in trust for them. That the sales were only attempts to cast clouds upon the right of complainant to redeem, no money in fact paid and that under the facts complainant has the right to redeem. That afterwards by deeds dated 25th May, 1875, Henry A. Kohn quit-claimed to himself and Joseph A. Kohn, David A. Kohn and Julius A. Kohn all of the lands above described as conveyed by Hoffman and Rogers, as trustees, to him. That such deeds were without consideration and merely to vest the pretended title of said Henry A. Kohn in said firm.

That in all of the notices of sale under which said trustees deeds are made, the place of sale is insufficiently described and is not a proper place to make a sale at.

And prays sales be vacated and set aside. That the value of the lands is $54,000.

Exhibit E, filed with this amendment, is a notice in which Kohn Brothers advertise the notes for $15,000, $10,000 of June 22, 1870, and one for $10,000 of July 22, 1870, and $6,-500, and $5,500 notes and trust deed.

Exhibits A, B, C, and D, filed with amendment are the notices of sale set out in trustees' deeds.

Summons on supplementary cross-bill of S. J. Walker.

Answer of Simon Yondorf to cross-bill and supplemental cross-bill of S. J. Walker, filed Nov. 5th, 1875.

Adopts his answer to cross-bill as answer to same, as amended.

Answer of the Kohn Brothers to cross-bill, and supplemental cross-bill, as amended, filed Nov. 5th, 1875.

Admit the making of the several instruments set out in the cross-bill and supplemental cross-bill, but substantially deny all of Walker's allegations touching them.

Order November 8th, 1875. Cause, by agreement, referred to Walter Butler, Master, to take proofs, "with leave to either party to apply to the court for direction."

Order November 29th, 1875. Leave to Walker to amend his cross-bill, and to make new parties defendant.

Amendments, filed November 28, 1875, *to cross-bill which was filed June* 5, 1875.

Makes Robert Loebnitz, Isaac Fleishman, Augustus Bauer, and David Frey, parties defendants.

Charges that said Miller, Liebenstein, Bauer, Loebnitz, Schoelkopf, the Kohns, Loewenthal, Koch, Fleishman, Austrian and Frey, or some one or more of them, have divers of the notes and other evidences of debt made by him to said bank, and the securities deposited by him and claimed to be collateral thereto; that they have received such notes and collateral securities, with notice, the particulars of which transfer to them respectively he can not state, for the reasons set forth above; and he claims a discovery of all they now have, and of those they have received from the bank and have disposed of, and relief in the premises.

Prays that the said defendants be required to surrender up notes, etc., which they, through the bank, have received from him, offering to pay what may be found due them.

Order April 12, 1876. Leave to complainants in original bill to file amendments and supplements to it.

Amendments and supplements to original bill, filed April 12, 1876.

On page 68, line 4, after numeral 283, amends as follows: That in a suit in the Superior Court of Cook County, M. D. Buchanan *vs.* The Bank *et al.*, wherein the bank filed a cross-bill, the bank obtained a decree of forclosure of the two trust deeds, securing the two $6,666.66 notes, which decree is still unsatisfied.

By way of supplement, that the judgment entered on the 19th of Nov. 1874, described on p. 122 of the bill, was afterwards vacated, and on the 25th of June, 1875, one for $11,060 entered, which still remains in full force, and that under the decree described on p. 151 of bill the premises therein described were sold to the bank and that it still holds the same.

Exceptions to answer of S. J. Walker, filed Nov. 3, 1876.

Order Nov. 20, 1876, *over-ruling those exceptions.*

Order May 10, 1877, *leave to S. J. Walker to amend answer and answer so amended to stand as answer to the amended and supplemental bill.*

Amendments to answer of S. J. Walker filed May 10, 1877.

This defendant further answering hereby under the statute in such case made and provided, gives notice that he intends to defend against each and all of the contracts set out and alluded to in said bill of complainant and sued upon in this cause by said complainant, on the ground that they and each and all of them are usurious.

Replication by Bank, filed May 10, 1877.

Clerk's Certificate.

Be it remembered that heretofore, to-wit: on the 12th day of January, 1876, a certain order was made and entered of record, and a certain stipulation was filed in said court, which said order and stipulation are as follows, viz.:

Order 12th January, 1876, sustaining the objection interposed by Loewenthal to the production of the papers and vouchers of the bank by Loewenthal, its president, unless the said Samuel J. Walker should, by a stipulation duly signed and filed in this cause, waive the forfeiture of legal interest so that in taking the account in the cause interest might be charged against the said Walker upon the loan or forbearance of money to him by said bank, at legal rate, notwithstanding any forfeiture thereof which he might otherwise be entitled to; and that none of the other partie

to this suit should have the benefit of said books and papers, etc., unless a like stipulation be signed and filed by them respectively, to which ruling of the court the defendants by their counsel except.

And upon filing such stipulation then and there by said Walker that the International Bank produce before the master, under the oath of its officers, the books, papers, vouchers and other written memoranda in its possession touching the business dealings or transactions had, done or transacted by or between it and said Walker in obedience to the said subpœna, or as might be necessary to a full, accurate and complete statement of the accounts in the case before the master.

Stipulation of Walker as follows: "It is hereby, under and in pursuance of the order this day made in this cause, but not intending to hereby waive the exception taken to such order, stipulated by said Walker, that the forfeiture of legal interest be, and the same is hereinafter expressly waived so that in taking of accounts in the case, interest shall be charged against the said Walker, upon the loan or forbearance of money to him, up to and at the legal rate therefor, notwithstanding any forfeiture which the said Walker might otherwise claim or be entitled to; but all evidence obtained from checks, etc., produced under said order shall not be used by the parties thereto in any other than the causes in which said bank and Walker are interested, and standing upon reference to the Master.

(Signed.) SAMUEL J. WALKER."

Order of July 6, 1887.

The International Bank of Chicago
15157 vs. 532 } Bill.
Samuel J. Walker et al.

And

Samuel J. Walker
vs. } Cross-bill.
The International Bank of Chicago

"And now, this cause having come on this day to be heard, and the Court having announced the principles governing the same.

"Now, therefore, before entering a final decree herein, the Court refers this cause to Walter Butler, one of the Masters in Chancery of this Court, for the sole purpose of ascertaining the amount due upon each principal note, as the same may

be ascertained from the evidence heretofore adduced herein, except the said principal note, number 3082B, bearing date April 4th, 1874, being for the sum of eight thousand dollars, and he is hereby directed to compute such amount, so due upon each principal note and each collateral note, with the exceptions hereinbefore stated.

"And he is further directed to permit the said Samuel J. Walker to select the principal notes belonging to said bank, upon which to apply the fifteen thousand dollars ($15,000), paid to said bank by the check of Baird and Bradley, bearing date the —— day of ———, A. D. 1874.

"And the said Samuel J. Walker having now elected in open court to have said International Bank charged with the net proceeds of the sale of the premises, ordered by this court to be sold in a certain cause, heretofore pending in this court, wherein said International Bank was complainant, and Frederick Haskell, John Barker, Samuel J. Walker and others were defendants, which said premises were purchased at such sale by said International Bank, the said master is directed, after deducting all costs and expenses of foreclosure of said premises, to permit said bank by its officers to select the principal notes upon which to have said net proceeds applied.

"And the said master is further directed to take an account of all moneys collected by said bank upon collaterals special to all the above mentioned principal notes, as the same appear from the evidence now taken, and apply the same upon the principal notes, for which they were specially pledged.

"And said master shall also take an account of all sums paid upon general collaterals held by said bank, as such payments appear from the evidence heretofore adduced herein, and apply the same upon the principal notes so held by said bank as it may appear from the evidence already adduced that said bank has heretofore chosen to apply them, or, if said bank has not applied them, that said master shall apply the same, as said bank by its officers may before the master, elect to apply them; when partial payments have been made the master shall follow the usual rule of computation.

"Where payments have been made to said bank on general collaterals, the bank shall be charged at the rate of six per cent. per annum thereon. The Master shall compute interest upon said principal notes that bear interest from date at the rate such notes bear prior to maturity from the

time to which interest has already been paid, and upon said principal notes that do not bear interest from date, at the rate of six per cent. per annum from the date to which interest was last paid, and upon all said collateral notes he shall compute interest according to their terms.

"The said Master is further directed not to consider the question of usurious payments of interest upon any of said notes.

"The court further finds that at different times during the continuance of the dealings between Walker and the International Bank, accounts were presented to said Walker by the bank of amounts debited and credited to him upon the books of the bank, and that said accounts were retained by Walker without objection on his part, made either to the aggregate or the various items of said accounts, and up to the time of the commencement of this litigation no objections had been made to the same, and that said accounts are not to be investigated by the master as to such general items, but said Walker may be allowed to prove, if he can, that there have been items included fraudulently in said accounts, or that there are specific credits to which he is entitled in said accounts."

Final decree, April 25, 1878.

Finds S. J. Walker indebted to bank on his notes to it. Bank numbers, dates and amounts as follows:

First—2701, Ap. 15, 1873, for $4,000; due $5,022.06.
Second—2009, Dec. 30, 1871, for $10,000; due $12,531.66.
Third—2013, Dec. 30, 1871, for $16,748; due $20,999.03.
Fourth—2629, Mar. 27, 1873, for $6,000; due $6,423.98.
Fifth—2893, June 20, 1873, for $10,000; due $12,540.00.
Sixth—2527, Jan'y 20, 1873, for $6,000; due $7,501.00.
Seventh—2529, Jan'y 20, 1873, for $6,000; due $7,501.00.
Eighth—2659, April 4, 1873, for $5,000; due $6,386.66.
Ninth—2822, May 29, 1873, for $8,000; due $10.022.67.
Tenth—2795, Nov. 20, 1872, for $4,000; due $5,697.62.
Eleventh—2796, Nov. 20, 1872, for $4,000; due $5,697.62.
Twelfth—2797, Nov. 20, 1872, for $4,000; due $5,697.62.
Thirteenth—2740, April 29, 1873, for $5,000; due $6,-265.83.
Fourteenth—2741, April 29, 1873, for $5,000; due $6,-265.83.
Fifteenth—2430, Nov. 24, 1872, for $5,000; due $1,113.18.
Sixteenth—2698, April 15, 1873, for $1,000; due $59.83.
Seventeenth—3151, Sept. 18, 1873, for $12,500; due $15,-620.83.

Eighteenth—3276, Jan'y 17, 1874, for $10,000; due $12,290.00.

Nineteenth—3394, Mar. 17, 1874, for $41,755.67; due $8,151.57.

Twentieth—Kinney note, for $7,000; due $10,007.37.

Twenty-first—Kinney note, for $5,000; due $7,104.16.

Twenty-second—2612, Mar. 14, 1873, for $7,500; ———

Twenty-third—3082 A, Sept. 4, 1873, for $10,000; ———

These notes paid by application of Baird & Bradley check, leaving a balance due Walker of $414.46 unapplied.

Finds balance due from Walker to bank to be on 15th January, 1878, $172.474.

That Walker pledged and delivered the bank collateral securities from time to time, some specifically, others generally, to secure all of indebtedness of Walker to it. That those specifically pledged to it were also held as a general security under the three agreements or contracts, dated July 7, 1869, Dec. 30, 1871, and July 9, 1873, and sets them out *verbatim*.

That bank has introduced in evidence all the collaterals held by it. That since commencement of suit, certain of those collaterals had been foreclosed, and premises securing same ordered to be sold by decree of that court in various suits theretofore pending in it. Those collaterals are set out, a $12,500 note by H. H. Walker, date 18th August, 1870, secured on lots 1 and 2, block D, Wright's addition. Two $50,000 notes made by S. J. Walker, dated December 29, 1871, and another note for $50,000 by S. J. Walker, date June 24, 1872, also Nos. 5, 9, 12, 11, 13, 2, of the series of 13 notes, each $7,500, also note for $15,000 by H. H. Walker, date April 10, 1871. (These are in the Bauer suit.) Also one note by same for $10,000, date September 26, 1879. (The Brennock suit.) Also one by A. C. Badger for $6,666.66, date January 5, 1871. (In *Bank* v. *Wilshire*.)

That the remainder of the securities had by the bank from S. J. Walker and introduced in this cause, and which had not been foreclosed or collected, are those thereinafter described in ordering part of decree.

That Walker is not indebted on note 3082 B, date April 4th, 1874.

That the allegations of cross-bill filed by Austrian and others are true, and complainants in that bill are interested in the securities above set out, foreclosed in other suits since suit commenced, and that the indebtedness due them respectively is as stated in said cross-bill. That all the

material allegations in the original bill and the amendments, and supplements thereto, are true, except as above stated therein.

It is ordered, adjudged and decreed that the equities of the case are with the complainant, and that the cross-bill, amendment, and supplement thereto, be dismissed for want of equity. That the report of W. Butler, master, filed in the cause, be confirmed and objections and exceptions thereto overruled.

That S. J. Walker pay the bank the sum of $172,474 with interest at 6 per cent. from January 15th, 1878, and in case of default for twenty days hereafter, it is further ordered, adjudged and decreed that the following described securities owned by said bank, or so much as might be necessary to raise the amount of said indebtedness so found due from S. J. Walker, to the bank, at public auction, by W. Butler, Esq. Master in Chancery.

First. A note dated January 19, 1871, for $6,666.66, due two years after date, with interest at 8 per cent. per annum, payable to and endorsed by S. J. Walker, made by A. C. Badger, (exhibit No. 103,) secured by trust deed from Badger and wife to J. G. Rogers of same date, conveying land in Cook Co. (exhibit No. 104.) Also another note dated Jan'y 19, 1871, for $6,666.66, due one year after date, with interest at 8 per cent. per annum, payable to and endorsed by S. J. Walker, made by A. C. Badger, (exhibit No. 105,) secured by a certain other trust deed from Badger and wife to Rogers of even date, conveying land in Cook Co. (exhibit No. 106,) and sets forth a decree rendered March 2, 1875, foreclosing these trust deeds in the case of *Buchanan* v. *International Bank*, and others, directed to be sold with these securities.

Second. Another note, dated Aug. 16, 1871, for $13,500, due 18 months after date, with interest at 8 per cent. made by H. H. Walker to his own order and by him endorsed, (exhibit No. 107,) and another note dated of same date, same amount, same interest, made by H. H. Walker to his own order and by him endorsed, (exhibit No. 108,) and these notes secured by a trust deed made by S. J. Walker and wife to Rogers on land in Cook County recorded Aug. 21, 1871, (exhibit No. 109,) part of the land released therefrom.

Third. A note dated Feb'y 15, 1871, for $5,200, due one year after date, 8 per cent. interest, to the order of and endorsed by S. J. Walker, made by Francis A. Riddle, (ex-

hibit No. 110;) also another note of same date, same amount, due in two years, same interest, made by Riddle to and endorsed by S. J. Walker, (exhibit No. 111;) also another note, of same date, same amount, due three years after date, same interest, made by Riddle to and endorsed by S. J. Walker, (exhibit No. 112,) to secure which three notes Riddle made to Rogers a trust deed on land in Cook Co. of same date and recorded, (exhibit No. 113,) part of the premises released from this deed.

Fourth. Three promissory notes dated Oct. 28, 1872, each for $266.66, payable respectively at 1, 2 and 3 years after date, interest 8 per cent., made by Patrick Higgins to and endorsed by S. J. Walker, to secure which said Higgins made his trust deed to Francis A. Hoffman, conveying land in Cook Co. duly recorded.

Fifth. Two other notes dated Oct. 22, 1872, each for $166.66, payable two and three years after date, interest 8 per cent., made by Leonard Lues to, and endorsed by S. J. Walker, (Exhibit No. 122,) secured by a trust deed made by Lues to Hoffman on land in Cook County, duly recorded. (Exhibit No. 123.)

Sixth. Two other notes dated Oct. 22, 1872, each for $500, payable two and three years after date, interest 8 per cent., made by William Kerrigan to, and endorsed by S. J. Walker, secured by a trust deed made by said Kerrigan to Hoffman on land in Cook County, duly recorded.

Seventh. Two other notes dated Oct. 1, 1872, each for $200, payable two and three years after date, interest 8 per cent., made by Ann W. and James Quinn to, and endorsed by S. J. Walker, secured by a trust deed made by said Ann W. and James Quinn to Henry Waller conveying land in Cook County, duly recorded.

Eighth. Twenty railroad bonds made by the Chicago, Danville & Vincennes railway company each for $1,000, numbered 4251 to 4270 inclusive, and described in a decree of the Cook Circuit Court wherein Lowenthal was complainant and the C. D. & V. R. Co. and others defendants. (Exhibits 133 to 152.)

Ninth. A judgment in Superior Court of Cook County in favor of the bank and against A. C. Badger and others for $11,060, June 25, 1875, and the check on which it was rendered, drawn by S. J. Walker on A. C. and O. F. Badger, date Sept. 13, 1873.

Tenth. A note dated Sept. 18, 1873, at four months, for

$6,500, made by J. D. Kinney to, and endorsed by S. J. Walker, and the judgment entered thereon in Cincinnati.

Eleventh. A note dated July 11, 1873, for $8,333, payable Oct. 1, 1873, made by C. D. & V. Railroad Company to, and endorsed by S. J. Walker, (Exhibit No. 157,) and another note made by same to, and endorsed by same, dated July 22, 1873, for $7,500, at ninety days, (Exhibit No. 158,) and another note made by same to, and endorsed by same, for $8,625, at seventy-five days, dated Aug. 11, 1873, (Exhibit No. 159,) and another note made by same to, and endorsed by same, dated Sept. 9, 1873, for $7,350, at sixty-five days, (Exhibit No. 160,) and another note made by same to, and endorsed by same, dated Sept. 9, 1873, for $7,350, at ninety-five days (Exhibit No. 161).

Twelfth. A judgment in the Superior Court of Cincinnati for $7,220.50, rendered Ap. 10, 1874, wherein International Bank was plaintiff, J. D. Kinney defendant, and another judgment rendered in Superior Court of Cincinnati, Ap. 13, 1874, for $5,130, wherein the bank was plaintiff and J. D. Kinney defendant.

Thirteenth. Also two notes dated Sept. 23, 1872, each for $362.50 at two and three years after date, interest 8 per cent., made by John McQuade to, and indorsed by S. J. Walker, to secure which, said McQuade made a trust deed to Hoffman on land in Cook Co., duly recorded.

Fourteenth. Also two notes dated Sep. 10, 1872, each for $450, at two and three years, interest 8 per cent., made by Charles Manske to, and indorsed by Samuel J. Walker, secured by a trust deed made by said Manske to Hoffman, trustee, conveying land in Cook Co., duly recorded.

Fifteenth. Two notes dated Oct. 24, 1872, for $1,066.66 each at two and three years after date, interest 8 per cent., made by Frank Boehm to, and indorsed by S. J. Walker, (Exhibit 177,) secured by trust deed made by said Boehm to Hoffman trustee on land in Cook Co., duly recorded. (Exhibit 178.)

Sixteenth. Note dated Ap. 29, 1873, for $225, at four years, interest 8 per cent., made by George Bradford to, and indorsed by S. J. Walker, (Exhibit No. 180,) secured by a trust deed made by said Bradford to Hoffman, trustee, conveying land in Cook Co., duly recorded. (Exhibit No. 181.)

Seventeenth. Note dated June 1, 1871, for $2,000 at five years, interest 8 per cent., made by Mary C. and Silas D. Baldwin to, and indorsed by S. J. Walker, (Exhibit No.

183,) secured by a trust deed made by them to Hoffman, trustee, conveying land in Cook Co., duly recorded. (Exhibit No. 184.)

Eighteenth. Note dated Nov. 26, 1869, for $700, at one year, interest 8 per cent., made by Gregory Walsh to, and indorsed by, Henry H. Walker (Exhibit No. 185), secured by a trust deed made by said Walsh to J. G. Rogers, trustee, conveying land in Cook Co., duly recorded. (Exhibit No. 186.)

Nineteenth. Five notes dated May 27, 1873, each for $5,000, at one and two years, interest 8 per cent., made by F. A. Riddle to, and indorsed by, S. J. Walker (Exhibit Nos. 187, 188), secured a trust deed made by said Riddle to Rogers, on land in Cook Co., duly recorded. (Exhibit No. 189.)

Twentieth. Note dated July 31, 1873, for $2,374, at five months, made by Henry E. Pickett to, and indorsed by, Samuel J. Walker. (Exhibit 190.)

Twenty-first. Two notes dated May 20, 1873, each for $12,500 at fifteen months, interest 8 per cent., made by Samuel J. Walker to his own order, and by him indorsed (Exhibit Nos. 216 and 217), secured with two other notes of same description, held by Kohn Brothers (Exhibits 198 and 200), by a trust deed made by said S. J. Walker and wife to J. B. Rogers, conveying blocks 84 and 85 and N. ½ of blocks 91 and 92 in Canalport, Cook Co., of even date with said notes, duly recorded. (Exhibit No. 201.)

(*Note, these are also set out in same order and same numbers in Master's Report of sale, Rec. p. 73, and in the supplemental cross-bill of complaint filed by the assignee, June 28, 1881, R. p.* 127, post;

That sale be advertised. Any of the parties may bid and after the payment of the purchase money so bid and confirmation of sale, master to deliver securities to purchaser and execute a bill of sale thereof. To retain his commission and disbursements and all lawful costs and expenses to which bank has been subjected in enforcing the securities so pledged by Walker, and pay over the same to the parties entitled as may be directed by the court, and then pay balance of proceeds to bank, not exceeding amount found due, any surplus to be distributed as the court may order. That after execution of bill of sale and delivery of said securities, Walker and all persons claiming under him to be forever barred and foreclosed of all equity of redemption or other

claim in and to said securities and every part thereof, and the persons holding said securities after the said sale and delivery to them by the master shall be considered the absolute owners thereof, and have a right to enforce them in all lawful ways.

Master's Report of sale in Bank case, 15,157, filed June 26, 1878.

Recites that on the 25th June, 1878, in pursuance of decree entered in said cause, April 25, 1878, having advertised the property in said decree described, he sold to the International Bank:

The *first item*, the Badger notes for $6,666.66, and trust deed, Exhibits Nos. 103 and 104, for $6,000.

The *second*, the H. H. Walker notes for $13,500, and trust deed, Exhibits Nos. 107, 108 and 109, for $6,000.

The *third*, the three Riddle notes for $5,200 each and trust deed, Exhibits Nos. 110, 111, 112 and 113, for $8,500.

The *fourth*, the three Patrick Higgins notes for $266.66 each, and trust deed for $300.

The *fifth*, note of Leonard Leus for $166.66, and trust deed, Exhibits Nos. 122 and 123, for $200.

The *sixth*, two notes of Kerrigan for $500 each, and trust deed for $600.

The *seventh*, two notes of Ann and J. Quinn for $200 each, and trust deed, for $300.

The *eighth*, twenty railroad bonds of C. D. & V. R. R. Co., each for $1,000, Exhibits 133 to 152, for $10,000.

The *ninth*, the Badger judgment, and check for $10,000, Exhibit No. 153, for $100.00.

Tenth. The note and judgment against John D. Kinney, for $500.

Eleventh. The five notes of the C. D. & V. R. R. Co., Exhibits Nos. 157, 158, 159, 160, 161, for $5,000.

Twelfth. Two judgments against J. D. Kinney, for $10,000.

Fifteenth. Two notes of Frank Boehm for $1,066 each, and trust deed, Exhibits Nos. 176, 177 and 178, for $1,000.

Sixteenth. Note of Geo. Bradford for $225, and trust deed, Exhibit Nos. 130 and ——, for $225.00.

Seventeenth. Note of Mary and S. C. Baldwin for $2,000, and trust deed, Exhibits Nos. 183 and 184, for $175.00.

Eighteenth. Note of Gregory Walsh for $700, and trust deed, Exhibits Nos. 185 and 186, for $700.00.

Nineteenth. Two notes of F. A. Riddle for $5,000 each, and trust deed, Exhibits Nos. 187, 188 and 189, for $2.47.

Twentieth. Note for $2,374, of Henry E. Pickett, Exhibit No. 190, for $1.13.

Twenty-first. Two notes of S. J. Walker to his own order, for $12,500, and trust deed, Exhibits Nos. 216, 217 and 201, for $3,000.00.

And that he sold to H. Winston Walker the 13th item, McQuade notes, for $200, and the 14th item, Manske notes, for $225.

Order, June 26, 1878. Confirming report of sale, *nisi*.

Order, June 29, 1878. Overruling exceptions and confirming report of sale.

Report of Distribution, filed March 15, 1879.

This report shows gross sales to be $37,168.60, less expenses, $251.15, leaving balance of the bids of the bank to be credited on decree $37,168.60. Reserves the $100 paid by H. W. Walker and the Manske and McQuade notes, subject to order of court.

Order, March 15, 1879. Confirming Master's Report of Distribution, filed that day.

Order, June 6, 1879. Master to re-sell the securities in his hands, unless bids paid.

Order, Oct. 21, 1879. Confirms master's report of sale of Manske and McQuade notes.

Report filed Oct. 21, 1879. Shows H. W. Walker paid his bids for Manske and McQuade notes and the amount $425.00 paid bank.

Procedendo from Appellate Court, filed April 11, 1881. Sets forth the reversal of the decree of April 25, 1878, and directs the cause to be proceeded in according to law.

Order of Appellate Court remanding cause, filed April 11, 1881.

At a term of Appellate Court, First District, March, 1881, on the 8th April, 1881, decree of Circuit Court reversed and cause remanded.

Order, June 27, 1881. Cause reinstated, and leave to Jenkins, assignee, to file supplemental bill.

Order, June 28, 1881. That defendants, to supplemental bill of Jenkins, answer the same by first day of July term next.

Supplemental cross-bill of Jenkins, assignee, filed June 28, 1881.

(This bill was lost, and loss supplied. R. p. 12.)

Petition of Jenkins, assignee, filed November 1, 1881.

This is a petition to consolidate the Bank case 15,157, the Bauer case, No. 12,962, and the Fleishman case, No 15,551

—all pending in court, and relating to same principal notes.

Order, March 27, 1883. Leave to International Bank to file supplemental bill, and to Jenkins, assignee, to file an amended cross-bill.

Order, June 18, 1883. Leave to all parties to amend their pleadings.

Supplemental bill of International Bank. Filed Nov. 26, 1883, by leave of court.

Sets forth the filing of the original bill in this cause, 17th Feb'y, 1875, and its allegations and prayer in a general way, and refers to it for its contents. That Walker filed his answer thereto and a cross-bill to which the bank answered the cause at issue and undisposed of. That on the 25th April, 1878, a decree was rendered, finding the amount due the bank on the indebtedness set out in the bill to have been, on the 15th June, 1878, $172,474, at the date of the master's report filed in the cause.

And by way of supplement. That a writ of error was sued out of the Appellate Court, First District, and such proceedings had that said decree was reversed and cause remanded. That April 26, 1878, S. J. Walker in bankruptcy was adjudicated bankrupt, and on the 31st July, 1878, was appointed his assignee in bankruptcy, and his assets duly transferred to him. That Jenkins, on his application to this court after the said reversal, was allowed to defend and prosecute said cross-bill filed herein by said Walker, and duly instituted in place of said Walker herein. That said cause has not been heard since its reversal.

"That a certain cause was lately pending in said Circuit Court of Cook County, on the chancery side thereof, wherein George Wilshire, Joseph W. Wilshire, William M. Wilshire, Sarah Wilshire, Frances M. Wilshire, Ella Pomeroy and Fannie Pomeroy, were complainants in the original and supplemental bill filed therein, and the said International Bank, John G. Rogers, Samuel J. Walker and David Frey were defendants thereto; and wherein said David Frey was complainant in his cross-bill and supplement filed therein, and said George Wilshire, the International Bank, John G. Rogers, Samuel J. Walker, Frances M. Wilshire, Joseph W. Wilshire, William M. Wilshire, Sarah Wilshire Ella Pomeroy, Fannie Pomeroy, John H. Young, Alpheus C. Badger and Elvira C. Badger were defendants thereto; and wherein the said International Bank was complainant in its certain cross-bill filed therein, and said George Wilshire,

Frances M. Wilshire, Joseph W. Wilshire, William M. Wilshire, Sarah Wilshire, Ella Pomeroy, Fannie Pomeroy, John H. Young, John G. Rogers, Samuel J. Walker and David Frey, were defendants thereto; and wherein the said International Bank was complainant in its certain cross-bill, filed therein, and said George Wilshire, Frances M. Wilshire, Joseph W. Wilshire, William M. Wilshire, Sarah Wilshire, Ella Pomeroy, Fannie Pomeroy, John H. Young, John C. Rogers, Samuel J. Walker and David Frey, were defendants thereto; and wherein Samuel J. Walker was complainant in a cross-bill filed by him therein and said David Frey, said International Bank, John G. Rogers, George Wilshire, William Wilshire, Alpheus C. Badger and Elvira C. Badger, were defendants thereto; that the general number of said cause last above described is 18,556.

Your orator further alleges that in the cross-bill of said Samuel J. Walker, so filed in said cause last described, set out various transactions had between him and the said International Bank, and set out in a general way the large number of loans that were made to him by said International Bank, and claimed therein that the same were made upon usurious considerations and at usurious rates, and that all of the indebtedness so claimed by the bank against him was tainted with usury, and if an accounting were had between him and the said International Bank upon equitable principles, that he would owe the said bank nothing, and claimed that the usurious interests so paid by him to said bank upon the various transactions between them, should be applied in satisfaction of all the notes or evidence of indebtedness held by the bank against him; that in said cross-bill so filed by said Walker in the cause last referred to, he prayed among other things that an account be taken as between him and your orator, the International Bank, and that your orator be required to make a full, fair and complete statement of all the dealings and transactions had at any time between it and said Samuel J. Walker; and he did also, in his said cross-bill, pray for such other and further relief in the premises as should be agreeable to equity and good conscience: that he prayed for process of summons against your orator, and that your orator might be compelled to answer and abide by the decree of the Court in that case upon his, the said Walker's, cross-bill. And your orator refers to said cross-bill and claims the same benefit as if it were herein specifically set out—which

said cross-bill was so filed by said Samuel J. Walker on December 9th, A. D. 1875.

Your orator further alleges that on April the 12th, 1876, your orator, the International Bank, filed its answer in said Court to the cross-bill so filed by said Samuel J. Walker in the cause last referred to, wherein your orator admitted large and various transactions as alleged in the cross-bill of said Walker in said cause, and admitted that said Walker had been a borrower of money from your orator, and denied that said loans were made on usurious considerations or at usurious rates, and denied that all of the indebtedness so claimed by your orator against him, the said Samuel J. Walker, was tainted with usury, and denied that if an accounting were had between said Walker and your orator upon equitable principles, that said Walker would not owe the said bank anything, and denied the claim of said Walker that the usurious interest so paid by him to your orator upon the various transactions between them should be applied in satisfaction of all the notes or evidences of indebtedness held by your orator against him, the said Walker. And your orator alleged in said answer set up, that all accounts between it and the said Walker had been adjusted and settled, except the indebtedness evidenced by the notes so held by your orator.

And your orator denied in its said answer the allegations so made by said Walker that upon a full and fair statement and adjustment of his accounts with your orator, the International Bank, that all the principal notes made by said Walker to your orator or now held by it would be found to be fully paid and satisfied; and it denied the allegations so contained in the cross-bill of said Walker that he did not owe your orator anything, but alleged that said Walker owed it a large amount of money directly evidenced by the notes of said Walker in the possession of your orator; that in order to be more specific as to the allegations and contents of said answer, your orator here refers to the same and claims the same benefit as if it were specifically herein set out; that in said answer your orator joined in the issues tendered to it in said cross-bill of said Walker filed in that cause. That said Walker filed a general replication therein to the answer of your orator in that cause.

And your orator further alleges that in the cross-bill of your orator filed in said cause of George Wilshire, impleaded, etc., against the International Bank, impleaded, etc., being the cause last described, your orator set out its entire

indebtedness claimed by it to be due to it from said Samuel J. Walker, and all the promissory notes and other evidences of indebtedness so held by it against the said Samuel J. Walker. And your orator did therein allege that all of said notes and evidences of indebtedness so set out in said cross-bill were wholly undue and unpaid, and alleged that said Walker refused to pay said indebtedness so due unto your orator.

And your orator did in said cross-bill last described, among other things, pray for a full, true and perfect answer on the part of said Walker, to all and singular the allegations in said cross-bill contained, and that a decree might be entered by this honorable court in said cause, ordering certain premises in said bill described to be sold, and the proceeds thereof applied to the satisfaction of the indebtedness due to your orator from the said Samuel J. Walker.

And your orator did pray for such other and further relief in said premises as might be agreeable to equity and good conscience; which said cross-bill asked for a rule upon said Samuel J. Walker to answer the same; that in order to be more specific as to the allegations and contents of said cross-bill and to the issues tendered thereby, your orator makes the same a part hereof, and refers to the same and claims the same benefit as if it were specifically herein set out.

And your orator further alleges that said Samuel J. Walker filed his answer to the cross-bill so filed by your orator, filed in said cause of Wilshire, impleaded, etc., against the said International Bank, impleaded, etc., above referred to on May the 12th, 1877, in which he alleged in substance that he was not indebted to your orator, and denied the allegations of your orator's cross-bill to that effect, and alleged that it would so appear upon a full, fair and equitable accounting between them; and alleged that the indebtedness so set out in the cross-bill of your orator therein, were made upon usurious considerations and at usurious rates, and that any usurious interest so paid by him to your orator, upon the various transactions between them, should be applied in satisfaction of all the notes or evidences of indebtedness held by your orator against him, that said indebtedness would be satisfied. And said Walker further alleged in said answer that he was ready and willing to have an accounting between him and your orator under the order and direction of said court. That in order to be more specific as to the allegations and contents of said

answer, your orator makes the same a part hereof and refers to the same, and claims the same benefit as if it were specifically herein set out; that in said answer he, the said Walker, joined in the issues tendered to him in the said cross-bill of your orator filed in that case; that your orator filed its replication to the answer so filed by said Samuel J. Walker in that case; that said case afterwards came on to be heard in said Circuit Court upon the issues so tendered by said Walker to your orator, as aforesaid, and upon the issues so tendered by your orator to said Walker as aforesaid, and such proceedings were had therein, that on the 6th day of July, 1877, an interlocutory decree was entered in said cause last referred to, referring the same to Walter Butler, Esq., one of the Masters in Chancery of this court, at that time; among other things directing him to take and state an account between your orator and said Samuel J. Walker; that said Master did thereupon take and state an account between your orator and said Samuel J. Walker, and found the amount due from said Walker to your orator upon the various indebtedness set out in your orator's cross-bill in said cause, which report of said Master bore date January 15th, 1878, and was filed in said Circuit Court on the 2nd day of February, A. D. 1878; that such proceedings were afterwards had in said cause; that on the 28th day of February, 1878, a final decree was entered by said Circuit Court in said cause upon the respective issues so tendered, in which said decree the report of said master in chancery was affirmed, and said Samuel J. Walker was found by said court in said cause to be indebted unto your orator, on January 15th, 1878, in the sum of one hundred and seventy-two thousand four hundred and seventy-four dollars (172,474), which amount remained due and unpaid at the date of the entering of said decree with interest; that said Circuit Court had jurisdiction of said cause of said Samuel J. Walker and of your orator and of the subject matter of said litigation; that said decree so entered in said cause is still in full force and effect, and has never in any manner been reversed, set aside or annulled; that the issues tendered and joined in said cause of George Wilshire, impleaded, etc., against the said International Bank, impleaded, etc., last above referred to, in which said final decree was so entered, are the same as those tendered in the cross-bill of your orator so filed in this cause, Feb'y 17, 1875, and that the relief prayed for in the bill of your orator in this cause is for the same matters

and to the same extent as was prayed for by your orator in the said cross-bill so filed by it in said suit of George Wilshire, impleaded, etc., against the International Bank, impleaded, etc., above referred to.

And your orator alleges that the amount so ascertained to be due unto your orator in the said case of Wilshire, impleaded, against International Bank, impleaded, etc., is the amount due your orator upon the notes set up in his original bill in this cause, and is the amount to which it is entitled, with interest at the rate of six per cent. per annum, from January 15, 1878, and your orator is entitled to have said amount so declared by this court, to be the amount due to it, based upon the finding and decree in said former suit as heretofore alleged, in bar of any further accounting with reference to the amount due, and as fixing the amount so due to it.

And your orator sets up said former cross-bill of said Walker, and the former cross-bill of your orator in said suit last referred to, and the answers thereto respectively, and the replications and the several proceedings in said former suit, and the final decree entered therein in bar of the present cross-bill so now being prosecuted by said Robert E. Jenkins, assignee in bankruptcy of said Samuel J. Walker.

And your orator further alleges that it hoped that in consequence of the said decree above set out, that the said Robert E. Jenkins, assignee as aforesaid, would not have proceeded, and that the said Samuel J. Walker would not have proceeded with the said cross-bill so filed against your orator in this cause, but the said Robert E. Jenkins, assignee, as aforesaid, combining and confederating etc., with the said Samuel J. Walker, notwithstanding the final decree and adjudication above referred to, threatens and intends to proceed with his said cross-bill in this case and to bring the same on for hearing in due course, and the said Jenkins, assignee as aforesaid, pretends that there is no such adjudication in the said case of George Wilshire, impleaded, etc., against the International Bank, impleaded, etc., above referred to, was ever had as above set out.

And your orator further charges that under the ci cumstances aforesaid, it is unable to plead or to put the said former adjudication in issue or to use the same as a plea in bar to the said cross-bill, so being prosecuted by said Robert E. Jenkins, assignee as aforesaid, and the said actings and pretenses are contrary to equity and good conscience and

tend to the injury and oppression of your orater. In tender consideration whereof, and for as much as your orator has no remedy without the assistance of a court of equity, to the end therefore that the said former adjudication above set out may be established and declared by this honorable court a sufficient bar to any further proceedings by the said Robert E. Jenkins, assignee as aforesaid, under and by virtue of said cross-bill and a sufficient adjudication of the amount due unto your orator upon the evidence of indebtness set out in its original bill, and that the said Robert E. Jenkins, assignee as aforesaid, may under the circumstances be forthwith dismissed with costs, and that your orator may have such other and such further relief in the premises as may be agreeable to equity and good conscience, and which to your Honors may seem meet. May it please the court to grant a rule upon said Robert E. Jenkins, assignee in bankruptcy of Samuel J. Walker, as aforesaid, commanding him to answer this cross-bill of your orator, and to abide by such further order and decree as may be entered herein by this court.

Affidavit of A. M. Pence, verifying contents of above supplemental bill:

STATE OF ILLINOIS, } ss.
COUNTY OF COOK, }

A. M. Pence, being duly sworn, deposes and says that he is the attorney of said International Bank, that he has read the foregoing supplemental bill and knows the contents thereof, and that the same and the allegations therein contained are true. A. M. PENCE.

Subscribed and sworn to before me this 26th November, 1883.

[L. S.] BERNARD NEW, *Notary Public.*

Supplemental answer of Bank, filed Nov. 26, 1883, *to cross-bill of Samuel J. Walker.*

Exceptions of assignee to this were sustained, and it is therefore not abstracted. It sets up same matters as the supplemental bill above abstracted does.

Exceptions by assignee to the answer of Bank, filed Nov. 30, 1883.

For that it sets up matters which have wholly occurred since the filing of said cross-bill in bar thereof, thus depriving the complainant in cross-bill of an opportunity to traverse or deny the same, or set up matter in avoidance thereof.

Answer of Assignee, filed Nov. 30, 1883, to supplemental bill of Int. Bank.

That the statements as to the pleadings in this cause are probably true, but for greater certainty refers to the originals on file. That the cause is still pending, and as to the statements touching the cause therein referred to, being general number 18,556, Wilshire et al. v. International Bank et al., in this court, and the contents of the pleadings he neither admits nor denies the same, and calls for the original papers and files.

And this defendant further answering, says and insists, that George Wilshire and William Wilshire (said William then in life, since deceased,), on the —— day of March, A. D. 1874, filed their bill of complaint in the Superior Court of said Cook County, on the chancery side thereof, against the said International Bank of Chicago, Samuel J. Walker, David Frey and George G. Rogers, and therein said David Frey having answered said bill, filed his cross-bill of complaint against George Wilshire, William Wilshire. The International Bank of Chicago, John G. Rogers, Alpheus C. Badger, Elmira C. Badger and Samuel J. Walker.

That afterwards, in this court, the venue of said cause having been changed to this court, as hereinafter stated, the said William Wilshire having departed this life, Joseph W. Wilshire, William M. Wilshire, Francis M. Wilshire, Sarah Wilshire, Ella Pomeroy, Fanny Pomeroy, as his heirs, or as otherwise upon his death succeeding to his rights and estates involved in said suit, were by supplemental bill filed in this court, made parties to said suit. That afterwards, The International Bank of Chicago was complainant in a cross-bill filed by it in this court in said suit, against George Wilshire, Frances M. Wilshire, William M. Wilshire, Sarah Wilshire, Ella Pomeroy, Fannie Pomeroy, John H. Young, John G. Rogers, Samuel J. Walker and David Frey, defendants; that on the 30th of November, A. D. 1875, a stipulation was filed in said cause in the Superior Court, under which the venue was changed and the cause transferred to the Circuit Court of said County, the papers in the cause, including said stipulation, being filed in this Court on the 2nd day of December, A. D. 1875. That a copy of said stipulation is hereto attached, made part of this answer, marked "Exhibit A;" that the case was thereupon in this Court numbered General Number 18,556, and is known as such.

That afterwards, and on the 9th day of December, A. D.

1875, the said Walker filed his cross-bill of complaint against David Frey; The International Bank of Chicago, John G. Rogers, George Wilshire, William Wilshire, Alpheus C. Badger and Elvira C. Badger, defendants.

That at the date of said stipulation, and for some time prior thereto, there were pending in the said Circuit Court in Chancery divers other causes, wherein the said International Bank was complainant, and the subject-matters of which being connected with and growing out of its dealings with said Walker, and the said Walker was also a party, and which were known and designated as follows, viz.:

General Number 16176, Norman Williams et al. v. F. A. Hoffman et al.; General Number 12962, Augustus Bauer v. Samuel J. Walker et al.; General Number 15157, The International Bank v. Samuel J. Walker et al. (being the suit in which this answer is filed); General Number 15549, Berthold Loewenthal v. William Ernst et al.; General Number 15642, Berthold Loewenthal v. Cyrus H. McCormick et al.; General Number 15551, Isaac Fleishman v. Samuel J. Walker et al.; General Number 15979, The International Bank v. Benjamin V. Page et al.; General Number 15550, The International Bank v. John Brennock et al.; General Number 15575, The International Bank v. William Wilshire et al.; General Number 15815, Berthold Loewenthal v. Milford D. Buchanan et al.

That it was deemed advisable by the parties to said suits to make, through their respective counsel, a stipulation, and thereon obtain an order of reference for the taking of testimony and the use of said testimony when taken in said causes, of which stipulation a copy is hereto attached and made a part of this answer, as "Exhibit B," was filed on the 14th day of May, 1877, and in this cause is mentioned and referred to as "12962," The International Bank v. S. J. Walker, the use of said number being an evident mistake on the face of the paper.

That afterwards and in pursuance of said stipulation, on the 8th of November, A. D. 1875, an order was entered in this cause and all the other causes named in said stipulation, substantially as entered in this cause on that day, to which reference is had.

That said stipulation (of which "Exhibit B" is a copy) was filed on the 14th day of May, 1877, indorsed in the case of "International Bank v. Walker" is now and has been among the files of that case, and also had on it the following figures, which were intended to and did represent the

General Numbers of the causes in Court mentioned in it, to-wit: "15157," "12962," "15549," "15642," "15551," "15979," "15550," "15575," "15815," "16176," and the number "1533," which was the term number of the case, at that time general number 18556.

That on the 6th day of December, 1875, there was entered in said last mentioned cause, 18556, an order referring the cause to the same Master as the other causes above alluded to, and of which order a copy is herewith filed, made part of this answer, marked "Exhibit C," and the common order entered in the other cases is contained in "Exhibit D," entered the 8th November, 1875.

That in pursuance of said stipulations and orders, the parties to said causes, eleven cases in all, proceeded before Walter Butler, Master in Chancery, to take testimony of witnesses and introduce documentary evidence. That in the proceedings before the master on said reference, the whole eleven cases, that is, those stated in the stipulation, "Exhibit B," and the case G. No. 18556, T. No. 1533, Wilshire v. International Bank, were treated as one case, one report of the proceedings before the master was filed, and that was filed among the papers and files in G. No. 12962, Bauer v. Walker et al. That all of said causes came on for hearing and argument in May, 1877, together, before the Hon. E. S. Williams, then judge of this court, on the testimony so reported by the said master, and further testimony heard in open court; all of which testimony as taken, heard and used and the rulings touching the same are set forth in a certificate signed by said judge the 30th day of June, A. D. 1875, and filed in the said cause of Bauer v. Walker et al., Gen'l No. 12962, on the ——— day of June, A. D. 1878.

That under the said stipulations and orders of reference thereon made to said Butler, testimony was taken in the said cause No. 18556, Wilshire v. International Bank. The principal note claimed by said Frey in his cross-bill in said cause to be due from said Walker to him, was introduced in evidence before said master on that occasion as Exhibit No. 227; the collateral note of A. C. Badger, also therein mentioned, as Exhibit No. 228, and the trust deed accompanying and securing the same, also therein mentioned, as Exhibit No. 229, and were by said master returned into court upon the face of his report as part thereof, though in fact by agreement of counsel the various exhibits, including the said then above named, were retained by them to put them in evidence respectively, to be produced

whenever required, said exhibits last named, 227, 228 and 229, being produced before the master and put in evidence by the counsel for said bank and Frey.

That among the papers and files of said cause No. 18556 is, in the handwriting of A. M. Pence, Esq., one of the solicitors for said bank and Frey, a paper writing in the words and figures following, to-wit:

"Wilshire }
v. }
Bank. }

The testimony in this case is in the larger boxes marked Bauer v. Walker, and the same was taken in connection with 10 other cases and used in common.

A. M. PENCE,
Solicitor for Bank."

That inspection of the records and proceedings in the said cases mentioned in said stipulation, filed the 14th day of May, A. D. 1877, and in cause G D No. 18556, will and does show that the orders made in this cause on the 12th day of January, A. D. 1876, for the production of books, and that of July 6th, 1877, referring the cause to the master to take and state an account, were made in said cause G No. 18556, and in all the others the same draft of the order being used for each case, as will appear from the original drafts, copies of which as prepared by counsel and endorsed by the judge of the court, are herewith filed, made part hereof as Exhibits "E" and "F."

That a stipulation filed in this cause on the 12th day of January, 1876, under the order of that date, was also filed in said cause, General Number 18556, and in all the cases mentioned in said stipulation filed May 14th, 1877, so that in fact all of the said cases, including said case G D No. 18556, were as to the testimony in them treated by all parties connected therewith as one cause, and the said written statement made by said Pence as one of the solicitors in said cause, was made by him and left among the papers in the cause to indicate that fact, and is true in point of fact.

That some time in or about the 2d day of February, A. D. 1878, the precise date this defendant can not now state, said cause, General Number 18556, and the cause G. No. 12962, Augustus Bauer v. Samuel J. Walker et al., and G. No. 15157, The International Bank v. Samuel J. Walker, et al., with six other of said causes, *i. e.* 15549, 15642, 15550, 15979, 15575, 15815, came on

for hearing and were heard together, argued together, and considered by the Court as one cause on the same evidence. That prior thereto, the said master had, on a notice of which a copy is hereto attached, made part hereof and marked Exhibit "G," taken further testimony in the causes mentioned in said notice, which in its caption includes the three causes, General Numbers 12962, 15157 and 18556, as in one cause, making but one report of said testimony, which is filed in said cause as No. ———. That the issues, the evidence and the rulings of the Court and its decree, so far forth as said International Bank on the one side thereof, and Samuel J. Walker on the other are concerned, are identically the same in each one of said causes. That though the decree in case number 18556 was entered on the 28th day of February, 1878, and those in Nos. 15197 and 12962 not until the 25th April, 1878, the only difference is one of date of entry and not otherwise. That the amount found due the bank from said Walker is identically the same in each case, viz.: $172,474.00, upon a master's report, computing the amount upon the same identical notes up to the same date, January 15th, 1878. That if the judgment orders and decrees of the court were in any of said cases contrary to law and the equity of the parties, they were so in all. That in each of said cases Nos. 12962 and 15157, writs of error were on the 18th day of June, A. D. 1878, sued out of the Appellate of the First District to said Circuit Court by said Samuel J. Walker or in his name as plaintiff in error, and such proceedings were thereupon afterwards had; that at the ———— Term thereof the decree in said cause No. 15157 in favor of said bank was affirmed, and thereupon on —— day of ———— a writ of error was sued out of the Supreme Court of the State of Illinois by or in the name of said Walker as plaintiff in error upon the judgment of said Appellate Court, and thereupon afterwards such proceedings were had in the Supreme Court; that this defendant was substituted as plaintiff in error in place of said Walker, and said judgment of the Appellate Court and the decree of said Circuit Court were on the —— day of ————, ————, reversed for error therein, and said cause was remanded with directions to retake the account therein as between said Walker and said bank as by the opinion of said Court and its judgment reference being thereto had will more fully appear. That the said cause in said Appellate Court on

the writ of error sued out in the Bauer case, No. 12962, was not pressed to an early decision, partly to get all parties in it before the Court, there being over one hundred persons defendants to the bill of complaint, and after they were all brought in, then to abide the result of the case in the Supreme Court on the writ of error in the bank case, No. 15-157, above mentioned, and was not decided until the —— day of ————, 1881, when the decree was reversed and cause remanded. That the interest of the estate of the bankrupt, S. J. Walker, in the property involved in the case No. 18556, Wilshire v. The International Bank et al. was not deemed of sufficient consequence to justify a writ of error to review that decree and prevent a sale, and so none was sued out at that time; the said writs above named were sued out and all the cases were through a tacit understanding so far as any action in them was concerned beyond selling the property specifically pledged and described in each decree allowed to stand without action until the Supreme Court should pass upon the said bank case No. 15157. That the state of the records in this court in said cases G Nos. 15157, 12962, 15575, 18979, 18556, 15549, 15815, presents the singular and anomalous fact of seven decrees in as many different cases, each case and decree upon the same identical cause of action for identically the same amount of money, viz.: $172, 474.00, in favor of the said bank and against said Walker, in each one of which the same erroneous rulings had prevailed, whereby the true state of the account and what was justly due, if anything, from said Walker to the said bank was prevented from being ascertained and inequitable and unjust decrees entered in each case. That owing to the tedious and protracted litigation in the cause pending in the Supreme Court as aforesaid, the time in which a writ of error could be sued out by the assignee in bankruptcy to review 5 of these cases was allowed inadvertently to lapse, he being advised that he had five years within which to sue out a writ of error, and in good faith relying upon such advice, whereby, though he sued out a writ of error upon said decrees in No. 18556, and the Appellate Court upon consideration of errors assigned reversed said decrees in favor of said bank and directed the account to be taken over again, yet the Supreme Court of this State held this defendant barred of his writ of error by lapse of two years, the same being pleaded by said bank in bar thereof, and dismissed said writs. That the decree in this, the principal case, that of No. 15157, Inter-

national Bank v. Walker et al., founded upon the same pleadings, the same issues, the same causes of action to which there was the same defense, the same rulings of the Court as to the taking of the account, excluding the same evidence, as in case No. 18556, Wilshire v. Bank et al., each case in those particulars being identical with the other, and each case being contrary to and denying the equities of said Walker, and unjust towards him, having upon the merits and because of the want of equity been reversed, it would be highly inequitable and unjust to allow the decree in the said last named case to be now pleaded in bar of the account betweeen the International Bank and the said Walker, touching the same identical matters that are and were involved in all of said cases as between said Walker and said bank, and he prays that the said decree in said case No. 18556 shall not be, as prayed for in said cross-bill by said bank, taken as a bar to the taking of said account upon just and equitable principles, as directed by the Supreme Court and Appellate Court, but that the same shall so be taken as though said decree mentioned in said cross-bill had never been rendered, and this defendant prays leave to refer to the several records and other instruments in writing mentioned in this answer when produced for a more full and complete statement of the contents thereof respectively.

And this defendant submits and insists that the said bank hath not in and by its supplemental bill made or stated such a case as doth or ought to entitle it to any relief in this Court, and upon this point he prays the judgment of the Court, and that it be dismissed with costs.

"*Exhibit A*" (*part of answer of assignee*). Title of cause in Wilshire v. International Bank in the Superior Court, stipulates that a decree entered in that court in 1875 in t at cause be set aside, Walker permitted to answer. That the cause be at once re-instated on the docket and transferred to the Circuit Court of Cook county, and that the same be referred to W. Butler, Master, etc., and set down for hearing before Judge E. S. Williams at the same time with other cases in which said Walker and the International Bank and others are parties, on the — day of December, 1875, and that the bill of review heretofore filed in the Superior Court to review the record and decree in the above entitled cause be dismissed.

(Indorsed) Filed Nov. 30, 1875. A. F. Stevenson, Clerk

(Sup'r Ct.) Filed Dec. 2, 1875. Jacob Gross (Clerk of Circuit Court).

"*Exhibit B.*"

STATE OF ILLINOIS, } ss. In the Circuit Court of
County of Cook, } Cook County.

16176—Norman Williams et al. v. F. A. Hoffman.
15197—Augustus Bauer v. Samuel J. Walker et al.
12972—The International Bank v. Samuel J. Walker et al.
15549—Berthold Loewenthal v. William Ernst et al.
15642—Berthold Loewenthal v. Cyrus H. McCormick et al.
15551—Isaac Fleishman v. Samuel J. Walker et al.
15979—The International Bank v. Benjamin V. Page et al.
15550—The International Bank v. John Brennock et al.
15575—The International Bank v. William Wilshire et al.
15815—Berthold Loewenthal v. Milford D. Buchanan et al.

In Chancery.

It is hereby stipulated by the parties to the above entitled cases that the evidence taken in either of the above entitled cases may be read and considered as evidence in any other of said cases so far as the same is applicable and not subject to legal objections, and that all legal objections except as to matters of form to such testimony may be interposed at any time hereafter before final decree; and further that all said cases may be considered and heard together, not, however, intending to consolidate the same.

E. C. & W. C. LARNED.

And further that the Master shall make but one report of the depositions taken, and make in each case a separate report as to his findings in that case.

JEWETT & ADAMS,
For S. Walker and others.
W. T. BURGESS, for same.
MONROE, BISBEE & BALL,
For parties for whom they appear.
ROSENTHAL & PENCE,
For International Bank et al.
B. D. MAGRUDER,
For Wm. O. Thompson.
H. WALLER, for himself.
COOPER, GARNETT & PACKARD,
For Perkins et al.
J. C. & J. J. KNICKERBOCKER,
For J. B. Waller.
GRANT & SWIFT,
Sol'rs for C. F. Loomis.
E. C. & W. C. LARNED,
Sol'rs for R. M. Larned.
BARKER, BUEL & BARKER,
Att'ys for John Brennock.
JOHN G. ROGERS.

(Indorsed) Circuit Court, International Bank v. Walker. Stipulation. Filed May 14, '77. Jacob Gross, Cl'k. 15157, 12962, 15549, 15642, 15557, 15979, 15550, 15575, 15815, 16176, 1533.

"*Exhibit C.*"

William Wilshire et al.
18556 vs. 1533 } Bill.
The International Bank et al.

On motion and by agreement of parties, it is ordered that said cause be, and it hereby is referred to Walter Butler, Esq., one of the Masters in Chancery of this Court to take proof of all the material allegations in the said bill contained and report the same to this court with all convenient speed.

"*Exhibit D.*"

"On motion of Messrs. Jewett & Adams, solicitors for said defendant Samuel J. Walker, and by agreement of parties, it is ordered that said cause be and is hereby referred to Walter Butler, Esq., one of the Masters in Chancery of

this court, to take proof of all the material allegations in the said bill contained, and report the same to this court with all convenient speed, with leave to either party to apply to the court for directions."

"*Exhibit E.*"

The International Bank of Chicago
vs.
Samuel J. Walker.

"And now, this day, comes the said International Bank of Chicago, by Rosenthal & Pence, its counsel, and moves the Court for direction, as authorized by a former order of this Court as to whether it or its officers shall be compelled to produce the books, papers and vouchers, as called for in a subpœna *duces tecum* offered in evidence in said cause, before the Master in Chancery of this court, and marked, Exhibit 218.

"And it appearing to the court that Berthold Loewenthal, president of said bank, who had been examined as a witness on behalf of said bank, upon cross-examination by the defendants refused to produce the same for the reason assigned by him in the following language:

"'I refuse to produce them for the reason, that if produced they would have a tendency to expose the International Bank, as well as those claiming under the bank, in these suits upon the notes of Samuel J. Walker, sold and transferred by the said bank to them, to the penal liability of usury or forfeiture of the same, taken by them or contracted for with said Walker, and would have the tendency to subject said bank and said parties claiming under it to such penalty or forfeiture of usury, and would have a tendency to furnish evidence whereby the franchises and charter of said bank might be forfeited on account of such usury.'

"And it appearing to the court from the record herein that said Samuel J. Walker and other defendants are insisting upon the forfeiture of all interest taken or agreed to be taken by said Bank of said Samuel J. Walker, in their dealings with each other by virtue of the statute of Illinois relating to the subject of usury, and are defending against the recovery of any interest by said bank, or its assignees, upon the promissory notes set out in the pleadings, as made by said Walker to it, and are seeking to have satisfied and declared paid said promissory notes by the application of all interest heretofore received by said bank from said Walk-

er upon the ground that the same was usurious and illegal, and contrary to the statute in such case made and provided.

"And said motion having been fully argued by Rosenthal & Pence, counsel for said bank and said Loewenthal, and by John N. Jewett, E. C. Larned and W. T. Burgess, counsel for said defendants, and the Court being now fully advised in the premises, doth sustain the objection interposed by said Loewenthal to the production of the books, papers and vouchers as set forth and described in said subpœna *duces tecum*, unless the said Samuel J. Walker shall, by a stipulation duly signed and filed in this cause, waive the forfeiture of legal interest so that in taking the account in the cause interest may be charged against the said Walker upon the loan or forbearance of money to him by said bank up to and at the legal rate therefor, notwithstanding any forfeiture thereof which he might otherwise be entitled to, and that none of the other parties to this suit shall have the benefit of said books and papers, etc., unless a like stipulation be signed and filed by them respectively. To which ruling of the Court the defendants by their counsel now here except.

"And said stipulation in pursuance of said order being now here filed by said Walker, it is ordered that the said International Bank produce before the Master, under the oath of its officers, the books, papers, vouchers and other written memoranda in its possession touching the business dealings or transactions had, done or transacted by or between it and said Walker in obedience to the said subpoena, or as may be necessary to a full, accurate and complete statement of the accounts in the case before the Master."

(At the foot thereof the following memorandum:)

The above order to be entered in the following cases:

No. 15157—International Bank v. Walker et al.

No. 12962—Bauer v. Walker et al.

No. 15649—Loewenthal v Ernst et al.

No. 15550—International Bank v. Brennock et al.

No. 15551—Fleishman v. Walker et al.

No. 15575—International Bank v. Wilshire et al.

No. 15979—The Same v. Page et al.

No. ———Loewenthal v. Buchanan et al.

No. 18556—Wilshire v. International Bank et al.

No. 16176—Williams et al v. Hoffman et al.

(McCormick not in.)

Mr. Clerk let the foregoing order be entered in all the

foregoing cases, but if a stipulation is not filed by Walker in each case, then all that follows A to be omitted.

A. M. PENCE,
W. T. BURGESS.

Indorsed. "Enter Jan. 12, 1876, E. S. W."

Stipulation, filed 12th of January, 1876.

It is hereby (under and in pursuance of the order this day made in this cause, but not intending hereby to waive the exception taken to such order) stipulated by said Samuel J. Walker that the forfeiture of legal interest be, and the same is, hereby expressly waived, so that in taking the accounts in the cause, interest shall be charged against the said Walker upon the loan or forbearance of money to him, up to and at the legal rate therefor, notwithstanding any forfeiture which the said Walker might otherwise claim or be entitled to. But evidence obtained from books, etc., produced under said order shall not be used by the parties hereto in any other than the causes in which said bank and Walker are interested, and standing upon reference to the Master, W. Butler, Esq.

SAMUEL J. WALKER.

"*Exhibit F.*"

Order of July 6, 1877.

"And now, this cause having come on this day to be heard, and the Court having announced the principles governing the same.

"Now, therefore, before entering a final decree herein, the Court refers this cause to Walter Butler, one of the Masters in Chancery of this Court, for the sole purpose of ascertaining the amount due upon each principal note, as the same may be ascertained from the evidence heretofore adduced herein, except the said principal note number 3082 B, bearing date April 4th, 1874, being for the sum of eight thousand dollars, and he is hereby directed to compute such amount so due upon each principal note and each collateral note, with the exceptions hereinbefore stated.

"And he is further directed to permit the said Samuel J. Walker to select the principal notes belonging to said bank, upon which to apply the fifteen thousand dollars ($15,000) paid to said bank by the check of Baird and Bradley, bearing date the — day of ——, A. D. 1874.

"And the said Samuel J. Walker having now elected in open Court to have said International Bank charged with the net proceeds of the sale of the premises, ordered by this

Court to be sold in a certain cause heretofore pending in this Court, wherein said International Bank was complainant and Frederick Haskell, John Barker, Samuel J. Walker and others were defendants, which said premises were purchased at such sale by said International Bank, the said Master is directed, after deducting all costs and expenses of foreclosure of said premises, to permit said bank by its officers to select the principal notes upon which to have said net proceeds applied.

"And the said Master is further directed to take an account of all moneys collected by said bank upon collaterals special to all the above mentioned principal notes, as the same appear from the evidence now taken, and apply the same upon the principal notes for which they were specially pledged.

"And said Master shall also take an account of all sums paid upon general collaterals held by said bank, as such payments appear from the evidence heretofore adduced herein, and apply the same upon the principal notes so held by said bank, as it may appear from the evidence already adduced that said bank has heretofore chosen to apply them, or, if said bank has not applied them, that said Master shall apply the same as said bank by its officers may before the Master elect to apply them; when partial payments have been made the Master shall follow the usual rule of computation.

"Where payments have been made to said bank on general collaterals, the bank shall be charged at the rate of six per cent. per annum thereon. The Master shall compute interest upon said principal notes that bear interest from date at the rate such notes bear prior to maturity from the time to which interest has already been paid, and upon said principal notes that do not bear interest from date, at the rate of six per cent. per annum from the date to which interest was last paid, and upon all said collateral notes he shall compute interest according to their terms.

"The said Master is further directed not to consider the question of usurious payments of interest upon any of said notes.

"The Court further finds that at different times during the continuance of the dealings between Walker and the International Bank, accounts were presented to said Walker by the bank of amounts debited and credited to him upon the books of the bank, and that said accounts were retained by Walker without objection on his part, made either

to the aggregate or the various items of said accounts, and up to the time of the commencement of this litigation no objections had been made to the same, and that said accounts are not to be investigated by the Master as to such general items, but said Walker may be allowed to prove, if he can, that there have been items included fraudulently in said accounts, or that there are specific credits to which he is entitled in said accounts."

"*Exhibit G.*"

STATE OF ILLINOIS, } ss.
Cook County, }

Circuit Court of Cook County.

In Chancery.

Augustus Bauer
vs.
Samuel J. Walker, } ss.

International Bank
vs.
Samuel J. Walker et al. } ss.

Berthold Loewenthal
vs.
William Ernst et al. } ss.

International Bank
vs.
Benjamin V. Page et al. } ss.

International Bank
vs.
John Brennock et al. } ss.

International Bank
vs.
William Wilshire et al. } ss.

Berthold Loewenthal
vs.
M. D. Buchanan et al. } ss.

William Wilshire
vs.
International Bank et al. } ss.

To Messrs. Monroe, Bisbee & Ball, J. N. Jewett, Williams & Thompson, P. McHugh, E. C. & W. C. Larned, W. T. Burgess and D. B. Magruder, solicitors in said causes:

Please take notice that on Wednesday, the 26th day of September, 1877, at 10 o'clock A. M., we shall, before Walter

Butler, Esq., one of the Masters in Chancery of said court at his office, corner of Washington and Dearborn street, Chicago, Illinois, proceed with the statement of account in said cause and introduce whatever additional testimony we may deem necessary, at which time and place you may appear, if you see fit.

Dated September 21, 1877.

ROSENTHAL & PENCE,
Sol'rs for International Bank and others.

Service accepted, Sept. 22.

WILLIAMS & THOMPSON.
E. C. LARNED.
JOHN N. JEWETT.
W. T. BURGESS.

STATE OF ILLINOIS, }
Cook County, } ss.

R. Homer Grant, being duly sworn, deposes and says that he served the above notice on P. McHugh this 22d day of September, 1877, by leaving a copy with a clerk in charge of his office; also served Monroe, Bisbee & Ball this 22d day of September, A. D. 1877, by leaving a copy of said notice with Clerk Ogden in charge of their office.

R. HOMER GRANT.

Subscribed and sworn to, etc.

Supplemental cross-bill of assignee filed Nov. 30, 1883, by leave of court.

That bills and cross-bills had been filed in this cause on which the same is now pending.

That on the 19th March, 1875, the said International Bank filed in the said Circuit Court its bill of complaint against John Brennock and others and said S. J. Walker, of which "Exhibit H." thereto annexed is a copy. That on 31st December, 1875, said Walker filed his answer, of which a copy is annexed, "Exhibit I." That on 8th November, 1875, an order was made referring the cause to Walter Butler, one of the Masters, etc., to take proof of all the material allegations in said bill contained, and report the same to the court with all convenient speed, with leave to either party to apply to the court for directions. That on the 3d December, 1875, Walker filed his cross-bill in said cause, of which "Exhibit K." thereto attached is a copy. That on the 12th January, 1876, an order was

made and a stipulation filed, which are set out in "Exhibit L." copies thereof. That on the 31st January, 1876, the bank filed its answer to said cross-bill, of which "Exhibit M." therewith filed is a copy. That on the 7th July, 1877, an order was made by said court in said cause, of which "Exhibit N." is a copy. That all of the principal notes so called, on or touching which an account is prayed for in this cause, and set out in the original bill of complaint in this cause, were in issue and an account sought touching the same upon and under the issues made in the said cause, commonly called the "Brennock suit," were put in evidence in said cause as exhibits therein, and were considered and passed upon by the court as part of the dealings and transactions between said Walker and said bank. That afterwards and on the 24th April, 1879, and after the decree by the bank in its supplemental bill filed in this cause November 26, 1883, set up as having been rendered in the Wilshire v. Bank case, No. 18556, was in fact rendered; such proceedings were had in the said Brennock suit, that it came on that day to be heard on the bill of complaint (Exhibit H.) taken as confessed by some of the defendants therein, and upon the answer of S. J. Walker (Exhibit I.) and of John Brennock and upon replication to such answers and upon the cross-bill of Walker (Exhibit K.,) and the answer of the bank thereto (Exhibit L.,) and replication thereto and upon depositions filed in said cause, upon the report of Butler, Master, and exceptions thereto and upon evidence heard in open court, and the court being fully advised therein, found, ordered, adjudged and decreed that there was on that day, the 24th April, 1879, due said banks from Walker the sum of $10,000 for the payment of $8,532, of which the lands and premises described in the bill of complaint in that case stood charged and were liable to be sold to pay the same, and that unless said sum of $8,532 were paid within twenty days from that date, a sale of said lands and premises were by said decree directed to be made to satisfy the same, interest and costs, and if any surplus arose from said sale beyond that amount it was ordered that it should be brought into court to abide the order of the court, referring to the record for a more full statement of said decree. That said decree remains in full force, not reversed or set aside, and that afterwards, on or about the 30th April, 1879, without any sale of said premises therein described, which are other and

different than the land and premises involved in this suit, the said sum of $8,532 with interest, was on the faith of said decree paid to and received by said bank.

By means of which said several premises the sum of $1,468, with interest thereon from the 20th April, 1879, to the present, is the sum of money and no more due from said Walker, or from his assignee in bankruptcy, to said bank upon the matters of account between them, including all the principal notes involved in this suit and in issue under the original bill and cross-bill of Walker in this cause, which amount the complainant is ready and willing to pay said bank on the surrender by it of all securities received by it from said Walker. That said Circuit Court had jurisdiction in said Brennock suit of said Walker and of the complainant, as his assignee in bankruptcy, and of the said bank, and of the subject matter of said litigation. That said decree so entered in said cause is still in full force and effect, and not reversed, set aside or annulled. That the issues tendered and joined in said Brennock suit in which said decree was rendered as aforesaid are the same as those tendered in the cross-bill in this cause, filed by said Walker and now being prosecuted by this complainant, as his assignee in bankruptcy, and that said cross-bill of Walker in this cause is for the same matter and to the same extent as was charged and prayed for by said Walker in the cross-bill so filed by him in said Brennock suit. Complainant sets up the bill of the bank and the cross-bill of Walker in said Brennock suit, and the answers thereto respectively, and the replications, and the several proceedings in said former suit, and the final decree rendered and entered therein in bar of the present bill and supplemental bill, as now being prosecuted by said bank.

That during the pendency of said suit, on the 26th April 1878, Walker was adjudicated bankrupt, Jenkins appointed assignee, and received his deed as such July 31, 1878.

That the adjudication in the said Brennock suit being of a later date than the adjudication in the suit of Wilshire *et al.*, complainants against the International Bank and other defendants, No. 18,556, set up and relied upon in the supplemental bill of said bank, filed in this cause November 26, 1883, and upon the same matters and things that are involved in that suit, settles and determines the rights of the parties upon and touching those matters and things as in said Brennock suit is found and determined, and said decree so set up in said supplemental bill of said bank is not

conclusive upon the parties thereto, and no longer (if it ever did) operates as such bar as is pretended and claimed by said supplemental bill, if the same was or is any bar at all under the circumstances set out in the answer of your orator thereto.

That your orator under the circumstances of this case is unable to plead or put the said adjudication in said Brennock suit in issue or to use the same as a plea or matter in bar to the said bill and supplemental bill of said International Bank so being prosecuted by it against him in this suit, or otherwise obtain any relief thereon or by virtue thereof.

Prayer. Answer without oath, that the said former adjudication in the said Brennock suit above set out may be established and declared by this honorable Court a sufficient bar to any further proceedings by the said bank, under or by virtue of its said supplemental bill, and that the same be dismissed with costs, and that the amount found due in said decree in said Brennock suit may be declared to be the amount due from said Walker to said Bank, upon the principal notes set out in the bill of complaint in this cause, and for general relief and an order on defendants to answer, etc.

Exhibit H. Bill of complaint in the Brennock suit set out as part of certificate of evidence.

Exhibit I. Answer of S. J. Walker to bill of complaint in Brennock suit set out as part of certificate of evidence.

Exhibit K. Cross-bill of Samuel J. Walker in Brennock suit, set out as part of certificate of evidence.

Exhibit L. Order of January 12, 1876 in Brennock suit, set out as part of certificate of evidence. Stipulation of January 12, 1876, in Brennock suit, set out as part of certificate of evidence.

Exhibit M. Answer of International Bank to cross-bill of Samuel J. Walker in Brennock suit, set out in certificate of evidence.

Exhibit N. Decretal order of July 6, 1877, in Brennock suit, set out in certificate of evidence.

Answer of International Bank, filed 3d December, 1883, to the supplemental bill of Assignee, filed November 30, 1883.

Refers to pleadings in the cause in International Bank v. *et al.*, No. 15550 Brennock for their contents, and makes them part of its answer.

Admits order of November 8, 1875, substantially as set out. Also the order and stipulation of January 12, 1876, and the

order of July 7, 1877, but for greater certainty refers to record.

Denies that all the principal notes on or touching which an account is prayed for in this case, set out in its bill therein were in issue and an account sought touching the same upon and under the issues made in said Brennock suit Genl. No. 15550.

Admits final decree of 24th April, 1879. Denies that it is truly set out in the bill, and sets out a copy of it, but refers to the record for greater certainty.

That on the — day of January, 1872 after the record of the trust deed to Rogers set out in the bill in the Brennock suit, conveyed the premises to Brennock for a valuable consideration and thereafter, in January, 1872, by mesne conveyances the said premises became vested in said John Brennock. That under the interlocutory order of July 6, 1877, S. J. Walker made application of a portion of $15,000 to the satisfaction of the principal note set out in the bill in that cause. That after the satisfaction of said note this defendant had a right to said security so described in said bill in satisfaction of whatever indebtedness had been created prior to the conveyance of said premises by said Walker. That said decree is not truly set out in said supplementary bill. That the said decree does not pretend to ascertain the actual amount due to this defendant from S. J. Walker or his said assignee, but simply finds that at that time an amount of money exceeding $10,000 was due to it, and that of the same identical indebtedness which was due to it when said collateral security was pledged to it and that of the same identical indebtedness which was due to it when said collateral security was pleged to it on September 26, 1870, the sum of $8,532, still continue to exist and remain unpaid, and it does not pretend to ascertain the actual amount so due to it from said Walker, or his said assignee when the final decree was entered in the Brennock case. But this defendant alleges that by said final decree the Master's report of the amount actually due to it was confirmed by the court, which amount by the report filed in that cause was on 15th January, 1878, $172,474, which was also found and ascertained to be the amount due this defendant from S. J. Walker by the final decree in the Wilshire case, No.18556. And defendant makes decree in Brennock case a part of its answer. And hence this defendant alleges that instead of said decree and proceedings in said Brennock case being

different or other, the same corresponds, so far as it was necessary for the purposes of that case with the final decree in the Wilshire case. That by confirmation of said Master's report in said Brennock case, the actual amount due unto this defendant, as ascertained by said Master, became the actual amount found due by this court, which confirmed and approved of the said Master's report. That in the Brennock case it became necessary to ascertain the amount which was due the defendant at the time when said collateral security was first pledged to it, or when the parties under whom Brennock claims first acquired title in said premises, and hence the court in its first decree in said Brennock case, did so find the amount due it on September 26, 1870, and which identical indebtedness existing at that time still remained unpaid to it, which amount was fixed by the court at $8,532, admits that the final decree in Brennock case was entered April 24, 1879, and remains unreversed, and that the indebtedness so secured by said collateral, and found by that decree with interest, was paid defendant, but was so paid by John Brennock, and not by Walker or his assignee. Denies that $1,468 and interest from April 29, 1879, is all that is due it from Walker or his assignee, but alleges that $172,474 with interest from January 15, 1878, as found and ascertained by the decree in the Wilshire case; and denies that the assignee is entitled to the surrender of the securities received by it from S. J. Walker. Alleges that any judgment or estoppel between it and S. J. Walker, accrueing subsequent to 26th April, 1878, can not be claimed as a judgment or estoppel in favor of or against th eassignee. That decree in no manner binds the assignee, as he was not made a party, and it was obtained after Walker filed his petition in bankruptcy. The decree in the Brennock case is not binding, either on the assignee nor in favor of the assignee against this defendant. Denies that the issues tendered and found in the Brennock case, are the same as those tendered by the cross-bill of Walker or by any of the pleadings in this cause; but admits that the issues tended by the cross-bill of said Walker in said Brennock cause, are the same as the issues tended by the cross-bill of said Walker now being prosecuted by said Jenkins in this cause, and alleges that the cross-bill of Walker being dismissed in that cause for want of equity, he said Walker, can no longer prosecute his cross-bill in this case for an accounting, and hence the supplemental bill so filed by said Jenkins in this cause

shows a complete bar against said Jenkins for any further account in this cause against this defendant. But defendant denies that the pleadings, record and proceedings in said Brennock cause is any bar to the present bill so now being prosecuted by it in this cause. Admits bankruptcy of Walker and appointment of his assignee as charged.

Order setting out stipulation to dismiss as to part of bill of complaint in this cause, entered January 9, 1884.

The order recites a stipulation made by the parties that the original bill, and amendments, and cross-bill of S. J. Walker, and supplement thereto, and the other pleadings relating to the following property be dismissed as to, *First*, two notes, (exhibits 107 and 108) H. H. Walker, dated Aug. 16, 1871, to his own order and by him indorsed for $13,500, at 18 and 24 months secured by trust deed (Exhibit 109) from S. J. Walker and wife to Rogers, conveying lots 17 to 25, block 6, Sutton's addition to Chicago and other property.

Second, three notes of F. A. Riddle, date Feb. 15, 1871, to S. J. Walker by him indorsed for $5,200 each, at 1, 2 and 3 years after date, secured by trust deed from Riddle to Rogers conveying certain lands in Cook County, the three notes being exhibits 110, 111 and 112, in the cause, and the trust deed exhibit 113.

Third, one note made by Mary C. and S. D. Baldwin, date June 1, 1871, for $2,000 at 5 years to S. J. Walker and by him indorsed secured by trust deed to John G. Rogers on land in Cook County being exhibits 183 and 184 in the cause; this dismissal made in pursuance of another stipulation of parties (not filed).

Order of January 12, 1884, of dismissal as to part of supplemental bill filed 1881.

And now comes the said Robert E. Jenkins, assignee, so by his solicitor, W. T. Burgess, and dismisses the supplemental cross-bill of complaint filed in this cause the—— day of——A. D. 1881, as to all of the items of sales made by the master under the decree in the cause therein specified except the one described as follows, viz.:

"Twenty-first, also a certain other promissory note, (describing one of the $12,500 notes dated May 20, 1873,)" also a certain other promissory note (describing another of the $12,500 notes dated May 20, 1873), to secure which said two last mentioned notes and two others of same description held by Kohn Brothers, he, the said Samuel J. Walker and Amanda M. his wife, executed their certain trust deed of even date with said notes, thereby conveying unto John G.

Rogers, in trust for that purpose, Blocks 84 and 85, and the north half of blocks 91 and 92 in the Town of Canalport, being in section 30 T. 39, N. R. 14 E, in Cook County, Illinois, which said trust deed was duly executed and acknowledged and filed for record May 21, 1873, and record book 161, page 586; such dismissal is hereby made without prejudice."

Replication of assignee to answer of International Bank to his supplemental cross-bill filed January 14, 1884.

Order, January 21, 1884, leave to assignee to amend answer to supplemental bill of Bank.

Amendments to answer, filed January 21, 1884.

"On page 14 at the end of 2nd line from bottom of page insert as follows, viz:

1st. And this defendant further answering says that all of the indebtedness held or claimed by the said bank to be due it from said Samuel J. Walker was in fact claimed and set out in said original bill of complaint in this cause No. 15157, and to that indebtedness the said Walker by his answer to said original bill and his cross-bill in his cause sets up the defences that he had to the said alleged indebtedness, denying that he owed the said bank anything and that this suit is, and in fact was and always had been the principal suit as between them touching said claimed indebtedness and the defences thereto; and that all of the bills and cross-bills hereinafter alluded to as filed by said bank were in fact filed after the bill in this cause 15157 was filed.

2nd. That in the said suit No. 12962, Bauer v. Walker *et al*, it was claimed by said bank in its cross-bill filed the twelfth "day of April, 1876, in said cause, that if any surplus should remain after the satisfaction of the principal notes therein set out, some of which had been by it assigned to other parties to said suit and others still held by itself, by the sale of the property under the collateral notes and trust deeds specially pledged for their security and described in such trust deeds, cited, under, the "blanket agreements," so-called, in the bill in this suit and in its said cross-bill set out and referred to, belonging to it to satisfy whatever said Walker owed to it, and touching the same, did, in its said cross-bill aver, "That by virtue of said agreement of July 7, 1869, your orator is entitled to have the collateral securities pledged by said Samuel J. Walker with your orator applied toward the payment of the entire indebtedness which then existed or has been since created and evidenced by the notes of said Samuel J. Walker or H. H.

Walker after the payment or extinguishment or other discharge of the principal indebtedness for which said collateral notes was specially pledged as aforesaid," and further "That said Samuel J. Walker is now indebted unto your orator in a large sum of money evidenced by various promissory notes described as follows," setting out the same identical notes and evidences of indebtedness that are set out in the original bill in this cause No. 15157, and further "That your orator is entitled under his said agreement or agreements so set out or referred to in this cross-bill to all the collateral notes herein set out or referred to in said original bill of said Bauer or said cross-bill of said Leopold Miller *et al*, and he is entitled to have the same or the proceeds thereof applied to the payment of the general indebtedness of the said Samuel J. Walker unto your orator, or he is entitled to so much of said collateral securities as shall remain upon the same ceasing to be a security for the principal note or notes for which they were specially pledged," and praying "that a decree may be entered by this honorable court, ordering the said premises described in the trust deeds, securing the collateral notes referred to in this cross-bill to be sold and the proceeds applied in the satisfaction of the indebtedness of the various parties holding the principal notes of said Samuel J. Walker as heretofore shown and after the satisfaction or extinguishment of said principal indebtedness, or if said collateral notes shall cease to be a security for the same, that what shall remain as the proceeds thereof shall be applied to the payment and extinguishment of the indebtedness due unto your orator from said Samuel J. Walker.

That the purposes and object of said cross-bill in said suit No. 12962 were merely to show the right of said bank to obtain such surplus, and beyond said cross-bill in said suit No. 12962, and any decree that might be or was rendered therein, were and are under all the circumstances herein set out merely incidental to the principal suit No. 15157, and not an independent suit and decree to be enforced without regard to the result of said suit No. 15157.

3d. That in the said suit No. 15549 Loewenthal v. Ernst *et al*, it was claimed by said bank in its cross-bill filed in said cause April 12, 1876, that what if any surplus should remain after the satisfaction and of a certain principal note therein set out, made to it by said S. J. Walker and by it assigned to said Loewenthal by the sale of the property under the collateral note and described in the trust, and

specially pledged for its security did under the blanket agreements so called, in this suit and in its said cross-bill, set out, belong to it to satisfy whatever said Walker owed it, and touching the same did in said cross-bill aver "that your orator retained said collateral note so secured by the trust deed as aforesaid to be held by it first as security for the note so sold and delivered unto said Loewenthal, and second after the same would cease to be security for said principal note that the proceeds or the balance thereof, should be applied upon the indebtedness due to your orator from the said Samuel J. Walker," and further that "at the time said collateral note of $20,000 was originally pledged to your orator, said Samuel J. Walker was largely indebted unto your orator upon promissory notes, and that said Samuel J. Walker has also since that time become largely indebted unto your orator upon various and divers promissory notes of his as here-in-after set out, and that your orator is entitled to the benefit of the security to the said note of twenty thousand dollars to be applied upon the general indebtedness of said Walker unto your orator represented by the promissory notes hereinafter described. That said Samuel J Walker for a valuable consideration became indebted to your orator upon the promissory notes above referred to and hereafter set out at the time they respectively bear date and for the amount therein specified, viz., and then sets out the same identical notes and indebtedness that are set out in the original bill of complaint in this cause No. 15157—and praying that the court would decree "all the premises in said trust deed described as above set out to be sold, and the proceeds then applied toward the payment and satisfaction of said indebtedness so reduced by said note of fifteen thousand dollars, and also for the satisfaction of the indebtedness so due unto your orator from said Walker not exceeding the amount due upon said collateral note of $20,000 as aforesaid, and if any surplus remains" it be applied according to the principles of equity.

That the purposes and object of said cross-bill in said suit No. 15548 were merely to show the right of the bank to obtain the surplus after satisfying the principal note held by said Loewenthal and beyond that said cross-bill and any decree that might be or was rendered therein, was and is under all the circumstances set out herein merely incidental to this said principal suit No. 15157 and not an independ-

ent suit and decree to be enforced without regard to the result of said suit.

4th. That in the said suit, No. 15979, The International Bank vs. Benjamin V. Page et al., it was claimed by said bank in its bill filed in said cause, April 26, A. D. 1875, that what, if any, surplus should remain after the satisfaction of certain principal notes therein set out made to it, by said S. J. Walker by the sale of the property under the collateral notes and described in the trust deeds specially pledged for their security, did under the blanket agreements, so called in the bill in this suit, and in its bill in said suit, No. 15979 set out, belong to it to satisfy whatever said Walker owed it, and touching the same did in its said bill, in case No. 15979, Bank vs. Page et al. aforesaid, aver: "That said Samuel J. Walker is largely indebted unto your orator upon other evidences of indebtedness besides those of the three promissory notes hereinbefore set out, and the amount of such indebtedness due to it by said Samuel J. Walker over and above the amount so due upon said three promissory notes first above set out, is far in excess of the amount due upon said note of $15,000, so secured by said trust deed to John G. Rogers as hereinbefore set out; and that your orator is entitled to have the whole amount of said collateral security, or the proceeds thereof, applied toward the payment of the indebtedness generally of said Samuel J. Walker under and by virtue of the contracts aforesaid; that said $15,000 note and trust deed securing the same were pledged unto your orator originally on or about the 15th day of May, 1871, and that the amount of the identical indebtedness of said Samuel J. Walker unto your orator, existing at the time of the pledge of said collateral security as aforesaid, in May, 1871, still continues to exist to an extent over and above the amount due upon said collateral note of $15,000 aforesaid."

That the purposes and object of said bill in said suit, No. 15979, were merely to show the right of the bank after satisfying the said three principal notes therein, and in the bill in said suit, No. 15197, set out to obtain the surplus, if any, aforesaid, and beyond that said bill in said suit. No. 15979, and any decree that might be or was rendered in it, was and is under all the circumstances set out herein, merely incidental to the said principal suit, No. 15197, and not an independent suit and decree to be enforced without regard to the result of said suit.

5th. That in the said suit, No. 15550, The International

Bank v. John Brennock et al., it was claimed by said bank in its bill filed in said cause that what, if any, surplus should remain after the satisfaction of certain principal notes therein set out, made to it by said Walker by the sale of the property under the collateral notes and described in the trust deeds specially pledged for their security, did under the blanket agreements, so called, in the bill in this suit and in its bill in said suit, No. 15550 set out, belong to it to satisfy whatever said Walker owed it, and touching the same, did in its said bill in case No. 15550 aver: "That said note and also said trust deed were held as a general pledge or collateral by your orator to secure whatever indebtedness was then due or might thereafter become due from said Samuel J. Walker unto your orator, in accordance with the agreement of which the following is a copy;" setting out said blanket agreements, and also averring: "That at the time when said promissory note of $10,000, (the collateral note meaning) was so pledged unto your orator, he, the said Samuel J. Walker was largely indebted unto your orator in an amount far exceeding the amount of said promissory note of $10,000, and that the same indebtedness of said Samuel J. Walker as it then existed, continues to exist and remains unpaid to a much larger amount than the amount now due upon said collateral note of $10,000." And also averring that your orator is entitled to have said premises foreclosed and sold, *and the proceeds resulting therefrom applied upon the indebtedness due unto your orator from said Samuel J. Walker*," and praying, " that a decree may be entered by this court ordering the premises above described be sold and *the proceeds towards the payment of the indebtedness of said Samuel J. Walker unto your orator.*"

That the purposes and object of said bill in said suit No. 15550 were after satisfying the said principal note therein and in the bill in said suit No. 15157 set out to show the right of the bank to obtain the surplus, if any, aforesaid, and beyond that said bill in said suit No. 15550, and any decree that might be or was rendered in it, was and is under all the circumstances herein set out merely incidental to the said principal suit No. 15157, and not an independent suit and decree to be enforced without regard to the result of said suit.

6th. That in the said suit No. 15575, The International Bank vs. William Wilshire et al., it was claimed by said bank in its bill filed March 22, 1875, in said cause that what, if any, surplus should remain after the satisfaction of a certain

principal note therein set out, made to it by said Walker by the sale of the property under the collateral note and described in the trust deed specially pledged for its security, did under the blanket agreements, so called in the bill in this suit and in its bill in said suit No. 15575 set out, belong to it to satisfy whatever Walker owed to, and touching the same did in its said bill in said suit No. 15575, aver: "That since said Badger note (the collateral note above alluded to) was originally pledged unto your orator as hereinbefore set out, the same has continued and remained as a collateral to secure the payment of all said Walker's indebtedness unto it. That an amount of the identical indebtedness due unto your orator from said Walker on the 5th day of January, A. D. 1871, much greater in amount than the principal and interest of said Badger note, and not including the indebtedness so evidenced by said note first above set out, still remains due and payable unto your orator, for the security of which and for the security of all indebtedness of said Walker unto your orator since contracted, the said Badger note and trust deed remains and is a security unto your orator; that your orator is entitled to have said collaterals or the proceeds thereof applied to the payment of the indebtedness of said Samuel J. Walker unto your orator, generally after the said collateral note and trust deed shall cease to be a security for the said principal note first above set out," and praying for "the sale of the premises above described and the application of the proceeds thereof to the satisfaction of said notes and the indebtedness due unto your orator."

That the purposes and object of said bill in said suit No. 15575 were after satisfying the said principal note therein and in the bill in said suit No. 15157, set out to show the right of the bank to obtain the surplus, if any, aforesaid, and beyond that, said bill in said suit No. 15575, and any decree that might be or was rendered in it, were and are under all the circumstances herein set out, merely incidental to said principal suit No. 15157, and not an independent suit and decree to be enforced without regard to the result of said suit.

7th. That in the said suit No. 15815, Berthold Loewenthal v. Milford D. Buchanan *et al* it was claimed by said bank in its cross-bill filed April 12, 1876, in said cause that what if any surplus should remain after the satisfaction of certain principal notes therein set out made to it by said S. J. Walker, and by it transferred and sold to said Loewenthal

by the sale of the property under the collateral notes and described in the trust deed specially pledged for its security did under the blanket agreements so called in the bill in this cause and in its cross bill in said suit No. 15815 set out belong to it to satisfy whatever said Walker owed it and touching the same did in said cross-bill in said case No. 15815 aver. "That under and by virtue of said contract, (meaning the blanket agreement aforesaid of July 7, A. D. 1869 therein set out) said two collateral notes above set out became a general collateral for any and all notes, held or to be held at any time by your orator executed by the said Samuel J. Walker or the said Henry H. Walker. That said Samuel J. Walker at the time said collateral notes were originally pledged to your orator, was largely indebted unto it upon promissory notes to (of) the said Samuel J. Walker and that said Samuel J. Walker has since that time, become largely indebted unto your orator upon various and divers promissory notes of the said Samuel J. Walker as hereinafter set out, which are all due and unpaid, and that your orator is entitled to the benefit of the security of the said two collateral notes, and to have the same applied to the general indebtedness of the said Walker unto your orator, as represented and evidenced by said promissory notes hereinafter to be described. That said Samuel J. Walker became indebted unto your orator for a valuable consideration upon the promissory notes, hereinafter set out, at the time they respectively bear date and for the amounts therein specifically enumerated" and then said cross-bill sets out the same identical notes which are set out in the said principal suit No. 15157 and then avers "that your orator is entitled to said collateral security as hereinbefore set out and is entitled to have the same applied to the indebtedness of the said Samuel J. Walker unto your orator, or unto so much thereof as shall remain upon the same ceasing to be security for the principal note, as herein set out, which is now owned and held by the said Berthold Loewenthal" and prays that "a decree may be entered by this honorable court ordering said premises to be sold and the proceeds thereof to be applied to the satisfaction of the indebtedness to your orator and to the extinguishment of the collateral notes so secured by said trust and as aforesaid."

That the purposes and object of said cross-bill in said suit No. 15815 were after satisfying the said principal note therein set out as transferred to said Loewenthal to show the

right of the bank to obtain the surplus if any aforesaid and beyond that said cross-bill in said suit No. 15815, and any decree that might be rendered in it were and are under all the circumstances herein set out merely incidental to said principal suit No. 15157 and not an independent suit and decree to be enforced without regard to the result of said suit.

That in the said suit No. 18556. William Wilshire *et al* v. The International Bank *et al*, it was claimed by said bank in its cross-bill filed April 12, 1876, in said cause that what if any surplus should remain after the satisfaction of a certain principal note therein set out made to it by said S. J. Walker and by it assigned to David Frey, one of the parties to said suit by the sale of the property under the collateral notes and trust deeds, and described in the said trust deed specially pledged for its security did under the blanket agreements so called in the bill in this cause and in its cross-bill in said cause No. 18556 set out belong to it, to satisfy whatever said Walker owed it and touching the same did in its said cross-bill therein aver:

"That notwithstanding the selling and delivery of said note of $5,000 unto said David Frey, your orator nevertheless, by virtue of the agreement aforesaid, became entitled to the benefit of said security for the payment of the indebtedness of the said Samuel J. Walker unto it after the payment and extinguishment of said notes so sold Frey or after said collaterals should cease to be a security for the same. That said Samuel J. Walker, at the time said collateral note and trust deed was so originally pledged with your orator, was largely indebted unto your orator on said promissory notes of the said Samuel J. Walker, which indebtedness still continues to exist in a large amount, as hereinafter will be shown. That said Walker has, also since that time become largely indebted unto your orator, upon various and divers promissory notes as hereinafter set out, and your orator is entitled to the benefit of the security of the said collateral note of $6,666.66, to be applied upon the general indebtedness of said Walker unto your orator, as represented by the promissory notes hereinafter to be described.

That said Samuel J. Walker, for a valuable consideration became indebted to your orator, upon the promissory notes hereinafter set out and above referred to, and at the time they respectively bear date for the amount therein specified, viz:" And then sets out the identical notes, set out in the said bill in said principal case, No. 15157, and then avers:

That all the foregoing notes "are owned by your orator, and are wholly due and unpaid, and that your orator is entitled to said collateral security, as hereinbefore set out, and is entitled to have the same applied to the payment of the indebtedness of the said Samuel J. Walker unto your orator, or unto so much thereof as shall remain upon the same, ceasing to be a security upon the principal note as herein set out, which is now owned and held by said David Frey," and praying that said premises might "be sold and the proceeds thereof applied to the satisfaction of the indebtedness due your orator, and in the extinguishment of the collateral notes so secured by said trust deeds, as aforesaid, but not praying for any account to be taken touching the amount due said bank from said Walker."

That the purposes and object of said cross-bill in said suit No. 18556 were, after satisfying the said principal note therein set out, as transferred by said bank to said Frey to show the right of the bank to obtain the surplus, if any, aforesaid, and beyond that said cross-bill and any decree that might be rendered upon it were, and are under all the circumstances herein set out, merely incidental to said principal suit No. 15,157, and not an independent suit and decree to be enforced without regard to the result of said suit No. 15157.

10th. And this defendant further answering says that the Master's report filed in the said cause No. 18556, on the 2d day of February, A, D. 1878, is as follows, to-wit:

Circuit Court of Cook County. In Chancery.

STATE OF ILLINOIS, } ss.
Cook County. }

George Wilshire et al.
v.
The International Bank of Chicago et al. } Bill and Supplemental bill.

David Frey
v.
George Wilshire et al. } Supplemental cross-bill.

The International Bank of Chicago
v.
George Wilshire et al. } Cross-bill.

Samuel J. Walker
v.
David Frey et al. } Cross-bill.

To the Honorable Judges of said Court. In Chancery sitting.

I, Walter Butler, Master in Chancery of said Cook County, do respectfully report, pursuant to an order of reference heretofore entered by said Court in said cause, that I herewith present a statement in tabulated form, showing the principal notes described in the bill in this cause; the collateral notes securing the payments of the same; the trust deeds securing the payment of said collaterals; and also showing all amounts paid on each of said notes, and the amount now due upon the same.

In finding the amount now due thereon, I have taken into consideration all the testimony taken in said cause.

Said statement is as follows:

Exhibit No. Prin. Notes.	Exhibit No Col. Notes.	Rate per cent.	Ex. No. T. D. securing col.		
227		6		Principal note.	
				Prin.....$	5,000
				Int. from Oct. 1, 1873	1,286
					6,286.66
				Collateral note 228, securing ex. 227.	
	228	8	229	Prin	6,666.66
				Int. from Jan. 5, 1871	3,748.12
					10,414,78
				Bank introduced its principal notes to obtain surplus, as follows:	
				Principal notes.	
40		6		Prin.....	4,000.00
				Int. from Oct. 12, 1873.....	1,022.00
41		6			5,022.00
41		6		Prin.....	10,000.00
				Int. from Oct. 26, 1873.....	2,531.66
					12,531.66
42		6		Prin.....	16,748.00
				Int. from Oct. 26, 1873.....	4,240.03
					20,988.03

43	6	Prin.....		6,000.00
		Int. from Oct. 22, '73, to Jan. 2, '74.....		70.00
				6,070.00
		Paid Jan. 2, 1874.....		363.50
				5,706.50
		Int. to March 30, 1875...	426.02	
		Paid March 30, 1875.....	48.00	
			378.02	
		Int. June 8, 1875	64.66	
			442.68	
		Paid June 8, 1875.....	291.00	
			151.68	
		Int. to March 26, 1876...	274.82	
			426.50	
		Paid March 27, 1876	24.00	
			402.50	
		Int. to April 10, 1876....	12.35	
			414.85	
		Paid April 10, 1876.....	301.25	
				113.60
		Int. to January 15, 1878.		603.88
				6,423.98
		Principal notes.		
45	6	Prin.....		10,000.00
		Int. from Oct. 21, 1873.....		2,540.00
				12,540.00
48	6	Prin.....		6,000.00
		Int. from Nov. 14, 1873.....		1,501.00
				7,501.00

50	6	Prin.....	6,000.00
		Int. from Nov. 14, 1873.....	1,501.00
			7,501.00
		Principal notes.	
53	6	Prin.....	5,000.00
		Int. from Oct. 1, 1873.....	1,386.66
			6,386.66
54	6	Prin.....	8,000.00
		Int. from Oct. 18, 1873.....	2,022.67
			10,022.67
55	10	Prin.....	4,000.00
		Int. from Oct. 17, 1873.....	1,697.62
			5,697.62
56	10	Prin.....	4,000.00
		Int. from 17, '73.....	1,697.62
			5,697.62
57	10	Prin.....	4,000.00
		Int. from Oct. 17, '73.....	1,697.00
			5,597.62
58	6	Prin.....	5,000.00
		Int. from Oct. 26, '73.....	1,265.83
			6,265.83
59	6	Prin.....	5,000.00
		Int. from Oct. 26, '73.....	1,265.83
			6,265.83

		Principal notes.		
60	6	Prin. at Nov. 11, '73		7,500.00
		Application of part of Baird & Bradley payment as of Nov. 11, '73		7,500.00
		Which leaves Ex. 60 paid.		
61	6	Prin. at Nov. 6, '73		10,000.00
		Balance Baird & Bradley payment		8,012.50
				1,987.50
		Int. to Sept. 2, 1874		98.04
				2,085.54
		Paid Sept. 2, 1874		2,500.00
		Balance in Walker's favor, to be applied on other indebtedness		414.46
		PRINCIPAL NOTES.		
63	6	Prin		5,000.00
		Paid	206 66	
		"	540	
		"	388	1,134.66
				3,865.34
		Int. from Oct. 1, '74, to Oct. 8, '74		4.50
				3,869.84
		Paid Oct. 8, '74		1,973
				1,896.84
		Int. to Oct. 22, '74		4.41
				1,901.25
		Paid Oct. 22, '74		95.30
				1,805.95
		Int. to Nov. 2, '74		3
				1,808.94
		Paid Nov. 2, '74		80
				1,728.95

		Int. to Jan. 30, '75.....	24.30
			1,754.25
		Paid Jan. 30, '75.....	80.00
			1,674.25
		Int. to Jan. 22, '75.....	39.59
			1,713.84
		Paid June 22, '75.....	364.00
			1,349.84
		Int. to Oct. 25, '75.....	27.65
			1,377.49
		Paid Oct. 25, '73.....	71.30
			1,306.19
		Int. to June 22, '76.....	51.56
			1,357.75
		Paid June 22, '76.....	340.00
			1,017.75
		Int. to Jan. 15, '78.....	95.43
			1,113.18

PRINCIPAL NOTES.

64	6	Prin.....	1,000.00
		Int. from Nov. 11, '73 to Feb. 4, '74.....	13.83
			1,013.83
		Paid Feb. 4, '74.....	96
			917.83
		Int. to May 13, '74	15.11
			932.94
		Paid May 31, '74.....	204
			728.94

		Int. to Aug. 1, '74	9.44
			738.38
		Paid Aug. 1, '74	400.00
			338.38
		Int. to Feb. 9, '75	10.58
			348.96
		Paid Feb. 9, '75	214
			134.96
		Int. to April 12, '75	1.40
			136.36
		Paid April 12, '75	85 00
			51.36
		Int. to. Jan. 15, '78	8.47
			59.83

PRINCIPAL NOTES.

65	6	Prin	12,500.00
		Due from Nov. 17, '78	3,120.83
			15,620.83
66	6	Prin	10,000.00
		Int. from March 21, '74	2,290.00
			12,290.00
67	10	Prin	41,755.67
		Int. from March 17, '74, to Sep. 2, '74	1,913.72
			43,669.39
		Paid Sept. 2, '74	2,906.89
			40,762.50
		Int. to Jan. 16, '77	9,669.75
			50,432.25

		Proceeds Barker & Haskell sale, Jan. 16, '77	37,000.00
			13,432.25
		Proceeds of general collaterals at same date	5,938.02
			7,494.23
		Int. to Jan. 15, '78	747.34
			8,151.57

PRINCIPAL NOTES.

67*a*	10	Prin	7,000.00
		Int. from Sept. 28, '79	3,007.37
			10,007.37
67*b*	10	Prin	5,000.00
		Int. from Oct. 30, '73	2,104.16
			7,104.16

All of which is respectfully submitted.
Chicago, January 15, 1878.

WALTER BUTLER,
Master in Chancery of Cook County.

I hereby certify that notice was given in the above entitled cause to all the respective counsel on January 16, 1878, to file objections or exceptions to said report by January 23, 1878, and that further time was then granted to said report until the afternoon of February 1, 1878, and no exceptions were filed thereto, which notices accompany this report.

WALTER BUTLER,
Master in Chancery of Cook County.

12th. And this defendant further answering says, that in each of said cases, General Numbers 12962, 15549, 15550, 15979, 15575, 15815, the said master filed a report under the said order of reference made to him in each of said causes on the 6th July, 1877, dated the same day Jan'y 15, 1878, substantially so far as the principal notes held by said bank were concerned, the same as the one in said case No. 18556, and in this cause No. 15157, that is, its caption,

after the entitling of the particular cause beginning with the words, "to the Honorable Judges," to the words, "said statement is as follows," and inclusive, after setting out the amount due on the particular principal note or notes involved in the bill of complaint in the cause then stating that the "bank introduces its principal notes to obtain surplus as follows," followed by the same notes in each report and the amounts due thereon, and then closing with the statement as herein set out from the words, "all of which is respectfully submitted," to his signature, are the same in all of said causes.

9th. And this defendant further answering says that by reason of the said several stipulations herein set out, touching the management and conduct of, and proceedings in said several suits whereby the said several suits were in those respects made one suit, the taking of the testimony thereunder and the hearing of all of the said causes in the master's office as one suit, as in fact was done the hearing of all of said causes before the Court as one suit, as in fact was done, the demands of said bank against said Walker in each of said suits being common to all of said suits, and made in all of them, the defenses of said Walker to such demands being common to all of said suits and made in all of them, the rights of the said parties, the bank and Walker as between and against each other, touching said demands and defenses, became and were so affected and changed thereby and interlaced and commingled that justice cannot now be done to either party by singling out a decree rendered in one of said suits and holding it in this suit to be a bar to an inquiry into the equities of the said parties as between themselves and conclusive upon them touching the premises.

11th. And this defendant further answering says, that the error assigned and upon which the decree in Bank v. Walker, No. 15157, was reversed by the Supreme Court, and the case of Bauer v. Walker, No. 12962, and the other six cases, 15549, 15550, 15979, 15575, 15815, and 18556, were reversed by the Appellate Court, was that the findings and orders in the interlocutory decree of July 6th, 1877, were erroneous, and particularly in this, that thereby the Court referred the "cause to Walter Butler, one of the Masters in Chancery of this Court, for the sole purpose of ascertaining the amount due upon each principal note, as the same may be ascertained from the evidence heretofore adduced herein, * * * and he is hereby directed to

compute such amount so due upon each principal note and each collateral note. * * * The said master is further directed not to consider the question of usurious payments of interest upon any of said notes," whereby the true state of the account between said bank and said Walker upon the issues made in said causes was prevented from being ascertained, as in equity and good conscience it ought to have been, whereby upon the face of the record itself, said order of July 6, 1877, the report of said master thereunder and the decree of said Court thereon in said case No. 18550, is highly inequitable and unjust, and not such orders and decrees as this Court would or ought now to make and enforce.

13th. "*A*." And this defendant further answering says, in case this Hon. Court should hold the said bank entitled to the relief prayed for in said supplemental bill of complaint to which this answer is made, notwithstanding the matters set up herein, then, that in the said suit, No. 15979, The International Bank v. Page et al., a sale of the lands described in the decree rendered therein was made thereunder, reported to and confirmed by the court, whereby the bank should be charged with the sum of $11,809.68, as of the date of such sale June 24th, 1878, and also that in the suit No. 15549, Loewenthal v. Ernst et al., a sale of the lands described in the decree therein was made thereunder, reported to and confirmed by the Court, whereby the sum of of $3,722.04 should be charged to the bank as of the date of said sale June 24th, 1878; and also that in this suit, No. 15157, sales of lands and other matters described in said decree rendered herein were made thereunder, reported to and confirmed by the Court, whereby the bank should be charged with the sum of thirty-four thousand one hundred and sixty-eight 60-100 dollars, ($34,168.60,) as of the date of such sale, June 24, 1878, except also and as said amounts may be charged and said bank also should be charged under stipulations of the parties heretofore made in this cause and the Bauer cause No. 12962. And also that in the said suit No. 15550, the International Bank v. John Brennock et al., there has been paid the said bank on account of the general collateral held by said bank, pledged with it by said Walker, being Note Exhibit No. 85, secured by trust deed Exhibit No. 86, under the decree rendered in said cause, the sum of eight thousand five hundred and thirty-two dollars, ($8,532.00,) on the 24th day of April, A. D. 1879, with which said bank should be charged as of that date.

And this defendant further answering says, that the report of the master, dated Jan'y 15, 1878, and filed the 2d day of February, 1878, in said last mentioned case, No. 18550, in the statement part thereof, in referring to the principal note, Exhibit No. 60, for $7,500 states as follows, to-wit:

Exhibit No. Prin. Note.	Ex. No Col. Note.	Rate per cent.	Ex. No. T. D. Securing Col.		
				Principal Note.....	
60		6		Prin. at Nov.11, 1873.....	$7,500.00
				Application of part of Baird and Bradley payment, as of Nov. 11, 1873.....	7,510.00
				Which leaves Ex. 50 paid...	
				Collateral Note 85,securing, Ex. 60.....	
	85	8	86	Prin.....	10,000.00
				Int. from Sept. 26, '70.....	5,842.21
					$15,842.21

(That it then states:)

"This is the Brennock property and Walker has applied the $15,000 item toward the satisfaction of the principal notes, complainants claim, however, to have collateral foreclosed and proceeds applied on general indebtedness under blanket agreement. Bank introduces balance of its principal notes as follows:

And then sets forth the same notes that are set out in the report in the cases No. 18179 and 18556, respectively.

That on the 24th day of April, A. D. 1879, a final decree was rendered and entered in said cause No. 15550, as follows, viz:

The International Bank of Chicago,
v.
John Brennock, Samuel J. Walker, Amanda M. Walker, Henry H. Walker, Francis A. Hoffman, Julius Rosenthal, and Joseph Tabor,
Bill.
15550
273.

and

Samuel J. Walker,
v.
The International Bank.
Cross Bill.

This day came said parties, by their respective solicitors,

and by agreement it is ordered that said cause be, and the same hereby is redocketed.

And thereupon this cause having now come on this day to be heard, upon the bill of complaint filed herein, taken as confessed by Amanda M. Walker, Henry H. Walker, Joseph Tabor, Julius Rosenthal and Francis A. Hoffman, and upon answers thereto by Samuel J. Walker and John Brennock, and upon replications to said answers and also upon the cross bill of Samuel J. Walker, filed herein, and upon answer thereto, by said International Bank, and upon replication to said answer, and also upon depositions filed in said cause, and upon the report of Walter Butler, Esq., Master in Chancery, and upon exceptions to said report, and upon evidence heard in open court, and the Court being now fully advised therein confirms said master's report; and it appearing to the Court, from all the foregoing, the Court finds:

That on or about the 26th day of September, A. D. 1870, said Samuel J. Walker endorsed, delivered and pledged unto said complainant, then doing business as the International Mutual Trust Company, the promissory note set out in said bill of complaint, and described as follows:

$10,000

CHICAGO, Sept. 26, 1870.

Two years after date I promise to pay to the order of Samuel J. Walker ten thousand dollars, at the Second National Bank of Chicago, Illinois, with interest from date at the rate of eight per cent. per annum, payable annually, value received.

(Signed) HENRY J. WALKER.

Which said note was duly endorsed by said Samuel J. Walker to said Trust Company for the purpose of securing any indebtedness then due from said Samuel J. Walker to said International Mutual Trust Company, or which might thereafter at any time become due from him unto said Trust Company.

That in order to secure the payment of said promissory note, pledged as aforesaid, according to its tenor and effect, he, the said Samuel J. Walker, and Amanda M. Walker, his wife, executed and delivered unto said Francis A. Hoffman a certain deed of trust, wherein and whereby they conveyed unto said Hoffman, for the purpose aforesaid, block fifteen (15), in Packer's subdivision of the northeast

quarter of the southwest quarter of section five (5) township thirty-eight (38), north of range fourteen (14), east of the third principal meridian, in Cook County, Illinois, which was duly executed and acknowledged by said Samuel J. Walker and Amanda M. Walker, his wife, and was filed for record in the Recorder's office of Cook County, Illinois, on the 29th day of September, 1870, and was recorded therein in Book 599 of deeds, at page 331, which is the same note and trust deed set out and described in said bill of complaint.

That on or about the 18th day of June, A. D., 1872, the name of said International Mutual Trust Company was changed to that of International Bank, the complainant in this cause, is the same institution in law as that of the said International Mutual Trust Company.

That said note and trust deed above described have been in the possession of said complainant for the purpose of securing indebtedness due or to become due to it from Samuel J. Walker ever since it was pledged to it as aforesaid.

That there was due to said complainant on the 1st day of January, 1872, and has been due to it ever since from said Samuel J. Walker, an amount of money exceeding the amount of ($10,000) ten thousand dollars, and that of the same identical indebtedness existing on the 1st day of January, 1872, for which the security aforesaid was pledged there is now due the sum of eighty-five hundred and thirty-two dollars ($8,532.00), and that said complainant is entitled to have said premises above described sold, and the proceeds applied in satisfaction of the indebtedness so due unto it, and the said John Brennock consented to the entry of this decree for such purpose.

And the court being now fully advised in the premises, Joseph N. Baker, solicitor for said Samuel J. Walker and said John Brennock, being also present, it is ordered, adjudged and decreed by the court that the said cross-bill of the said Samuel J. Walker be dismissed for want of equity; and it is further ordered, adjudged and decreed by the court that in case the said sum of ($8,532.00) eighty-five hundred and thirty-two dollars shall not be paid to said complainant or unto this court for the benefit of this complainant, by some of said defendants within twenty days from this date, that a sale shall be made by Walter Butler, Esq., one of the Masters in Chancery of the premises in said bill described and heretofore set out, viz.: Block fifteen (15) in Packer's subdivision of the northeast quarter

of the southwest quarter of section five (5), township thirty-eight (38), north range fourteen (14) east of the third principal meridian, in Cook County, Illinois, or so much of said block as may be necessary to raise the amount of eighty-five hundred and thirty-two dollars ($8,532.00), with interest thereon from this date and costs of suit.

That said sale shall be made for cash, at public auction, by said Master in Chancery, he first giving at least three consecutive weeks' public notice of such sale by advertisement in the Chicago Legal News, a public newspaper published and printed in the City of Chicago, in said county, or in some other public newspaper then published in said City of Chicago, the first of which publication shall be at least twenty-one days prior to the day of sale. That said advertisement shall contain the time, place and terms of sale, together with a description of the premises to be sold, and said Master shall make such sale in such manner as may be provided by law. That any of the parties hereto may become purchaser at such sale, and after such sale and payment of the purchase money, and the approval thereof by this court, said Master shall deliver to said purchaser or purchasers thereof the usual certificate of purchase, and if not redeemed from said sale according to law a Master's deed of said premises, or the portions sold, after the expiration of fifteen months from the date of said sale, shall be executed and delivered to the person or persons entitled thereto, in accordance with the statute, and when so executed and delivered, said Master's deed or deeds shall be a complete bar, both in law and equity, to all right, title, interest, claim or demand, or redemption of any and all parties hereto, and of any person claiming by, through or under them, or either of them, and said parties to whom such Master's deed shall be delivered shall be entitled to a writ of assistance, and shall be put into possession of said premises. That out of the proceeds of such sale said master shall retain his commissions and disbursements, and pay to the clerk of this court the cost of this suit to be taxed, and he shall then pay to the said complainant the sum of eighty-five hundred and thirty-two dollars ($8,532.00), found due to it as aforesaid, with legal interest from this date, and if any surplus shall then remain in his hands he shall bring the same into court for distribution as may be hereafter ordered by the court."

And this defendant, further answering, says and insists that the issues in this suit and the said Brennock suit, No.

15550, were the same as in the said suit of Wilshire v. The International Bank, No. 18556, as between the said Walker and the said bank, the same identical notes made by said Walker being the cause of action on the part of said bank against said Walker in each and and all of said causes—and the defenses of said Walker against the same being identically the same in each and all of said causes. That said decree in said Brennock suit settled and determined the amount due the said bank from said Walker on the said notes to be ten thousand dollars, and no more. That the said bank, under the averments contained in its bill of complaint and the issues made thereunder in said Brennock suit, No. 15550, was entitled to a decree for what if any amount was due on said notes and did recover a decree for that amount, and is not at liberty now to say that it withheld a part of its claims, and therefore, this defendant insists that said decree is a bar and an estoppel against it in favor of this defendant and conclusive that all that said Walker was indebted to said bank on the principal notes set out in said Master's report, was the said sum of ten thousand dollars, in and by said decree found to be due it.

15th. And this defendant, further answering, says and insists that the said decree in the said Brennock suit is as the last finding of a court having jurisdiction of the persons and of the subject matter, upon the matters in controversy between the said persons parties thereto, conclusive upon them and their rights in the premises, and is a bar to the relief prayed for by said complainant in its said supplemental bill touching the same matters in this cause; and he prays the same benefit from this exception that he would have had, had he pleaded the decree in the said Brennock suit, or otherwise set the same up in bar of said supplemental bill; and on this point he prays the judgment of this court, and that said supplemental bill be dismissed, hereby offering to pay the balance due the said bank on said decree in said Brennock suit, and claiming to be thereupon entitled to all securities received by said bank from said Walker as this court in equity and good conscience shall direct.

And this defendant, further answering, says that in the account to be taken the said bank should further be charged in respect to the following matters depending upon the result of suits in other courts, viz.:

In the said Bauer suit a sale of what is called the Kinney lots was made, to-wit: on the 24th June, 1878, in which

the said bank, with others, was interested. That a decree was rendered the -- day of ——, in the case of Jenkins, assignee of S. J. Walker, v. Lowenthal et al., No. ——, of this court, and is now pending on error in the Supreme Court of the United States, and if affirmed, then the said bank should be charged in the account as of the date of said sale with that portion thereof belonging to said bank, and that the question of so charging it should be reserved for further order.

That in the said Bauer suit a sale of lots 11 to 18, inclusive, in block 12, in Walker's dock addition, was made on. to-wit: the 24th of June, 1878, for the benefit of said bank and others; that a suit is now pending in the Circuit Court of the United States for the Northern District of Illinois, between said Jenkins, assignee, etc., and Henry H. Davis, D. K. Tenny and others, touching said lands, and the application of the proportion of said bank of the proceeds of such sale should be reserved for further order.

Exceptions to Answer, filed January 21, 1884.

"Exceptions taken by complainant to the answer and that portion of the amendments thereto down to place marked "A" in said amendments, on page 28 thereof, filed by said Jenkins on January 21, 1884, to the supplemental bill of the International Bank," filed in this cause.

"For that the said answer and said portion of the amendments thereto down to the point "A" on the 28th page thereof, is impertinent," thereupon excepts, and moves that it be expurged.

(NOTE.—This exception includes the whole of the answer filed Nov. 30, 1880, from R. P. 82 to R. P. 99, inclusive, and that part of the amendments filed January 21, 1884, from R. P. 103, at "1st," to R. P. 120, to words "make or enforce," in fourth line, inclusive.)

Answer filed January 25, 1884, of defendants Miller, Liebenstein, Bauer, Loebnitz, Schoelkopf, H. A. Kohn Brothers, Loewenthal, Koch, Austrian and Frey, to the amendments filed by Walker on Nov. 29, 1875.

Deny charges made in said amendments and admit that they have other principal and collateral notes than those mentioned in this suit, and deny that they have received any such notes with notice of any equity of said Walker not disclosed thereby, and deny all other allegations in said amendments.

Replication. Filed Jan. 25, 1884. To so much of answer

to its supplemental bill to which exceptions have not been sustained.

Replication of Int. Bank. Filed Jan. 30, 1884. Of assignee to answer of Miller et al. Filed 25th Jan. 1884.

Order of 16th Feb., 1884, supplying lost supplemental cross-bill of assignee, filed June 28, 1881, on stipulation of parties to that effect.

Supplemental cross-bill by assignee, filed June 28, 1881.

That on the 17th February, 1875, the International Bank filed the original bill in this cause. On the 11th March, 1875, Austrian and others filed their cross-bill. On the 29th April, 1875, Walker filed his cross-bill. On the 2d August, 1875, Walker filed his supplemental cross-bill, and amendments thereto on the 25th October and 29th November, 1875.

That said cause being at issue, came on for hearing and was heard, and on the 25th April, 1878, a decree was rendered by this court after finding the amount due from said Walker to said bank to be, on January 15, 1878, $172,474, it was ordered that unless the said sum be paid within twenty days thereafter sale be made by the Master of the matters and things following:

(Setting out the 21 items as described in the decree, R. P. 86 to 110. and report of sale, R. P. 115 to 150.)

That on the 26th June, 1878, the Master filed his report of sale made by him under said decree on the 25th June, 1878, wherein and whereby it appears that on that day he sold to said International Bank all of the matters and things set forth and described in said decree, except the 13th and 14th items which were sold to H. Wintson Walker, and who had paid thereon as earnest or deposit money $100, which items of sale are as follows from said report:

"First	$ 6,000 00
Second	6,000 00
Third	8,500 00
Fourth	300 00
Fifth	200 00
Sixth	600 00
Seventh	300 00
Eighth	10,000 00
Ninth	100 00
Tenth	5 00
Eleventh	50 00
Twelfth	10 00

Thirteenth, (bought by H. Winston Walker).....	200 00
Fourteenth, " " " "	225 00
Fifteenth.....	1,000 00
Sixteenth.....	225 00
Seventeenth	175 00
Eighteenth	700 00
Nineteenth	2 47
Twentieth	11 13
Twenty-first	3,000 00
Total	$37,593 60
Less amount of H. W. Walker's bids.....	425 00
	$37,168 60

That on 23d July, 1879, said H. W. Walker paid the Master his bids and the same was paid bank, and so reported and confirmed.

The bill then sets forth the suing out of a writ of error on the 18th June, 1878, before said sale of June 25, 1878, and the subsequent proceedings in the Appellate and Supreme Courts resulting in a reversal of the decree.

That assignee was substituted as plaintiff in error while cause was pending in the Supreme Court.

That the sales made by said Master to said bank and thereinabove set out, were all made after the service of process on the writ of error sued out of the Appellate Court. That the Master issued certificates of such sales to said bank of the matters and things so sold, which certificates of sale and said sale to it should be set aside by order and decree of this honorable Court, and the said collaterals declared subject to redemption upon payment of what, if anything, upon the taking of the account in this cause under the order of the Supreme Court, should appear to be due.

Prayer. That the International Bank, Miller, Liebenstein, Loewenthal, Schoelkopf, Bauer, Austrian, Koch, Henry A. Kohn, Julius A. Kohn, David A. Kohn, Joseph A. Kohn, Yondorf, Rogers, Loebnitz, Fleishman and Frey, made defendants thereto, should answer without oath.

That the sales so made by said Master be, with the certificates of sale by him issued, vacated and set aside and held for naught, and the said securities declared open to redemption to the like extent and with like effect, as though said sales had never taken place, upon the account being taken

herein as directed by the Supreme Court, and for general relief.

Stipulation for restoration of the preceding bill.

Decree entered Feb'y 16, 1884.

And now this day comes on to be heard said cause upon the pleadings and evidence. And said assignee under the demurrer contained in his answer to the supplemental bill of the bank insists that the said decree in said case, No. 18556, Wilshire et al. v. International Bank et al., as a cause of action against him is barred by Section 5057 of the R. S. of U. S. and thereupon, after argument had, the court doth overrule said demurrer and holds the cause so assigned to be insufficient as grounds for sustaining the same.

And it appearing to the court therefrom, the court finds that there was due the International Bank from Samuel J. Walker on 15th Jan'y, 1878, the sum of $172,474, as there found and ascertained by the decree of this court in a certain cause lately pending in this court on the chancery side thereof wherein George Wilshire and others were complainants and the said International Bank and others were defendants, and wherein the said bank was complainant in a cross-bill therein and S. J. Walker and others defendants thereto, and wherein Walker was complainant in his cross-bill therein and the bank and others defendants thereto; the general number of which cause was 18556, and is the same case set up by the supplemental bill in this cause. And, after application of all moneys collected by said bank since January 15, 1878, from said Walker or from securities held by it which were pledged to it by said Walker, the court finds that there is now due said bank from said Walker the sum of $143,630.22, as stated in the certificate of evidence herein.

And the court further finds that said Walker pledged and delivered to said bank collateral securities from time to time, some of which were pledged to secure a specific portion of said indebtedness, and others were pledged as a general security for the entire indebtedness. That those collaterals which were pledged as a security for a specific indebtedness were also by agreement between said bank and Walker to be held as a general security for all said indebtedness after the satisfaction or payment of such specific indebtedness. That the remainder of those securities, which were pledged only as general security and which have not been foreclosed or collected, are those hereinafter described in the

ordering part of this decree. That the collaterals which were specifically pledged for certain specific indebtedness have either been collected or are in process of collection by foreclosure in other suits. And the court being now fully advised in the premises, upon motion of Rosenthal & Pence, solicitors of said bank and others, it is:

Ordered, adjudged and decreed by the court that the equities of the case are with the said International Bank; and that the cross-bill filed by Samuel J. Walker, and the amendments and supplement thereto filed by him are hereby dismissed for want of equity. And that the supplemental cross-bill of Jenkins, assignee, etc., filed November 30, 1883, herein be dismissed for want of equity, and that the cross-bill of Joseph Austrian and others, on motion of their solicitor, is hereby dismissed without prejudice.

That Walker, his assignee or any other party to suit may within 20 days pay into court the said sum of $143,630.22, the amount found due bank with interest from date. And in case of such payment within that date or before sale as hereafter directed, the person so paying the same shall receive from the said bank all securities which are still held by the bank, and which were so pledged to it by said Walker, and which have not been enforced, collected and applied upon the amount due the bank.

In default thereof for twenty days directs the sale by Wait, Master, etc., of the following described securities or so much thereof as may be necessary, viz:

The Ann W. and James Quinn notes and trust deed. (Being the *seventh* item in decree of April 25, 1878. Record, page 97, ante.)

Twenty railroad bonds. (Being the *eighth* item in said decree. Record, page 98, ante.)

The judgment vs. A. C. Badger and check. (Being the *ninth* item in said decree. Record, page 98, ante.)

The promissory note for $6,500 by J. D. Kinney. (Being the *tenth* item in said decree. Ante Record, page 99.)

The five promissory notes for $8,333.00, $7,500, $8,625, $7,350, $7,350, by the C. D. & V. R. R. Co. (Being the *eleventh* item in said decree. Ante Rec. p. 100.)

The judgment vs. J. D. Kinney for $7,220.50. (Being the *twelfth* item in said decree. Ante Rec. p. 101.)

The Walsh note and trust deed. (Being the *eighteenth* item in said decree. Ante Rec. p. 107.)

The Francis A. Riddle notes and trust deed for $5,000

each. (Being the *nineteenth* item of said decree. Ante Rec. p. 108.)

The H. E. Pickett note for $2,374. (Being the *twentieth* item in said decree. Ante Rec. p. 109. These are all in the Master's report of sale. Rec. p. 113 to 150.)

Directs mode of sale, execution of bills of sale to purchaser, which shall vest an absolute title in time; if any surplus, Master shall distribute the same as hereafter directed by the court.

Appeal prayed and allowed on filing bond in $250.

Certificate of evidence, filed Feb'y 16, 1884.

Cause heard on the original bill and answers thereto; cross-bill of Austrian and answers thereto; cross-bill of Samuel J. Walker and answers thereto; supplemental cross-bill of Walker and answers; supplemental cross-bill of Jenkins, as assignee, etc., filed in 1881, and answers thereto; supplemental bill of International Bank, filed Nov. 26, 1883, and answers thereto; replication to that portion of the answer to which exceptions had not been sustained; supplemental cross-bill of assignee, filed Nov. 30, 1883, and answers thereto; replications being filed to all of said answers.

And to maintain the issues on their respective parts evidence was offered or introduced as follows:

The complainants in original bill and supplemental bill of the bank, and in the cross-bill of Austrian and others, and the defendants in the cross-bill and supplemental cross-bills of Jenkins, assignee, by Rosenthal & Pence, their solicitors, offered and read in evidence the principal notes belonging to the bank at the time of commencement of suit as the same were described in original bill, to which reference is made, and the originals need not be inserted; also the collateral notes and trust deeds as described in the ordering part of the final decree herein to which reference is made, and the originals need not be inserted in the certificate.

They also introduced the three *general collateral agreements:* 1, dated July 7, 1869, (R. p. 22, ante); 2, dated Dec. 30, 1871, (R. p. 22, ante); 3, dated July 9, 1873, (R. p. 22, ante.)

Admitted name of International Mutual Trust Co. legally changed to International Bank (the complainant) June 18, 1872.

Wilshire v. *International Bank pleadings, etc., introduced*, viz:

Bill of Complaint, filed March 11, 1874, by William Wilshire and George Wilshire.

That on 5th January, 1871, Alpheus C. Badger made his note for $6,666.66, at one year, with interest at 8 per cent., and being the owner of said premises next hereafter described, did, to secure payment of said note, make a trust deed dated January 5, 1871, his wife joining therein, conveying to John G. Rogers east half of block 32, in the C. T. subdivision of E ½, S. 31, T. 39, N. R. 14 E., in Cook County, Ill., recorded January 7, 1871, by which it was provided, if default were made in payment of said note, then on the application of the legal holder thereof, it should be lawful to sell said premises and all equity of redemption of said Badger, etc. That afterwards and before the 15th January, 1872, the title to said premises became vested in John D. Kinney, and he made on that day to Rogers a trust deed, whereby he conveyed to Rogers said block 32, to secure three notes made by him, dated January 15, 1872, to the order of S. J. Walker, in one, two and three years from date, each for $6,666.66, the deed containing a power of sale if notes not paid. That afterwards (date not given) Walker transferred the said notes secured by the Kinney trust deed to complainants. That the Kinney note, due 18th January, 1874, was not paid when due, and on application by complainants as the holders thereof to said Rogers, he having given due notice of the sale, sold the said premises to said complainants for $15,000. That said Rogers has advertised for sale under a trust deed first herein mentioned the E ½ of said block 32, to take place on the 11th March, 1874, at the Court House in Chicago, and will make such sale unless restrained by order of this court. That the place so advertised is not the place intended by the makers of said trust deed.

That the note made by Badger became and was shortly after the making thereof, the property of S. J. Walker; that he pledged the same with the International Bank as collateral security for loan or loans made by said bank to said Walker, the amount whereof the complainants can not state. That such loan or loans have long since been paid and satisfied by Walker; that neither said Bank, nor its assignees have any claim to said note nor authority to require any sale to be made under said trust deed. That said bank has made a colorable and fraudulent transfer of said note to David Frey, who now pretends to be the owner thereof, but they charge if any such transfer was made, it

was after the maturity of the note, and after the payment and satisfaction of such loans, and Frey therefore received said note with the notice of all the defects in the title thereof. That Walker at the time he sold the Kinney notes to them represented the Badger note as paid, and they, relying thereon, and having no notice to the contrary, purchased them, believing them to be a first lien on said premises. That S. J. Walker is the real owner of said Badger note and has not applied to Rogers to make any sale under said trust deed. That said trust deed has never been recorded since the fire of Oct. 1871, and though they have offered to Frey to pay the expense of recording, he refuses to allow it to be re-recorded.

Prayer: Answer without oath, for a writ of injunction against International Bank, John G. Rogers, Samuel J. Walker and David Frey to desist and refrain from any and all steps and proceedings whatever, for the sale of said premises or any part thereof, under and by virtue of the power of sale in said trust deed, made by said Badger and wife, and for summons against them to answer bill.

Indorsed. Filed in Superior Court, March 11, 1874; in Circuit Court, December 2, 1875.

Also *supplemental bill* of the heirs of William Wilshire to be made parties to suit filed in the Wilshire v. Bank case, R. P. 470 to 488, not deemed material to abstract it further.

Cross-bill of Samuel J. Walker, filed December 9th, 1875, in 18556, sets forth the filing of the original bill in the Superior Court, on the 11th of March, 1874, and the subsequent pleadings and changes of venue to the Circuit Court.

This contains the same averments as the answer to the original bill, as to his business dealings with the International Bank.

That he is by reason of the premises entitled to have the Badger note and trust deed surrendered up to him. That it was given in the course of his dealings with said bank, and is fully paid and satisfied without consideration, or upon an usurious consideration, and so it will appear upon a full and fair disclosure of all said dealings and transactions, and he claims such discovery and relief accordingly.

Prayer.—Answer without oath that the $5,000 Badger note and trust deed be surrendered to him.

That an account be taken in the premises between him and the bank, and it required to make a full, fair and complete statement of all dealings and transactions had at any time between it and him.

That Frey, under the circumstances, be held to be a holder of said $5,000 note, subject to the equities of complainant touching the same, and the taking of the account. And that if it appears, upon taking said account, that said $5,000 note is usurious, or fully paid and satisfied, that then it and the Badger note and trust deed be surrendered—and for general relief. Process prayed against Frey, the Bank, Rogers, G. and W. Wilshire, and A. C. and E. C. Badger.

Answer of Bank to cross-bill of S. J. Walker, filed 12th April, 1876, in 13556.

Admits Walker had for a long time past, kept with this defendant a deposit account, but cannot state as to the time mentioned in the cross-bill. Admits Walker deposited with it from time to time large sums of money and drew various checks and drafts against such deposits. That whatever checks Walker drew were not for settlement of fraudulent or pretended balances, but were in due course of business and done in good faith, and that the account so kept with Walker will show correctly the checks drawn. Admits that Walker was a borrower of money from it and that he gave his notes therefor from time to time, some of which sums were at time of borrowing paid over directly to him, and others credited him in his account. Denies that such loans were usurious, or in violation of its charter. Denies making any charges against him on false or fraudulent pretexts, or that any of them were usurious or to cover usury. It admits some loans were paid at maturity and others were extended from time to time as alleged, but denies that they were usurious. Admits the deposit by Walker of notes and obligations as security. That he had at no time the usual bank book, and did not keep regular books of account in which his dealings with it were set down, but the reason that he did not have a bank book was, he always refused to take one, and said that he was perfectly satisfied with the honesty of the bank and its officers, and that they would keep his accounts correctly. Believes Walker cannot himself make out a statement and account of their transactions in detail, and alleges that the accounts between it and said Walker with the exception of the indebtedness due it upon the promissory notes of said Walker are settled and the accounts closed. Denies that Walker has not had a fair settlement with it of his accounts. Admits that it has from time to time made out statements and presented them to Walker of his accounts; denies they were made out under false pretexts or obtained

his signature under any false pretences. Denies that he signed such statements and admitted them to be correct without any investigation or any opportunity to do so. That the said statements were accurate in all respects, and Walker is bound and stopped by them; denies that it has always kept such statements, and alleges it always furnished Walker with copies of them. Admits that it has for several years past kept all the checks of said Walker and has many of them in its possession, and that it has occasionally kept the paid notes of Walker, but not in any large numbers, and were always marked cancelled or paid and are not held as any obligation against him, that it has allowed Walker to examine his accounts and never refused him an opportunity to do so. Deny that upon a full and fair statement of his accounts, all notes held by it, including those assigned to others would be found paid and satisfied. Alleges that Walker owes it a large amount of money, evidenced by notes in its possession. Denies that the loan evidenced by the note 18th January, 1873, was made in 1870, or was upon a usurious consideration, or in violation of its charter; denies that there were no circumstances justifying the form of note used, or that it was used as a cover for usury, that it has been judiciously determined that it had the right to take a note in that form. "Admits that Walker signed such notes as he would any other presented to him by a bank on the occasion of borrowing money or obtaining an extension, because he, the said Walker, could not get accommodation with so doing." But denies that in such signing by said Walker, it was taking an undue or extortionate advantage of said Walker's wants and necessities, as a debtor to said bank or in any other capacity. That Walker is a man of great business capacity, and able to take care of himself, and of wonderful power of memory and mind.

Replication of Frey and Bank.

Cross-bill of International Bank filed 12th April, 1876 in 18556.

That on the 6th January, 1871, S. J. Walker was indebted to it in $4,500, evidenced by his note for that amount, and in order to secure it, he pledged as collateral, a note made by Badger to him for $6,666.66, of that date, payable in one year with interest at 10 per cent., to secure which note Badger had given a trust deed to John G. Rogers, whereby he and his wife conveyed the E ½ of block 32, in C. T. Subdivision of E ½ S. 31, T. 39, N. R. 14 E., Cook County, Ill.,

which was recorded January 7th, 1871. That said note and trust deed have ever since remained in defendant's possession to secure the indebtedness first above mentioned, due to it from said Walker, and second to secure whatever indebtedness Walker then owed this defendant, or which he might thereafter owe on his notes. That on the 7th July, 1869, S. J. Walker made to it a contract in writing:

CHICAGO, July 7th, 1869.

"Whereas, the undersigned has heretofore and intends hereafter to borrow money from the International Mutual Trust Company, on his own note or notes, or the note or notes of H. H. Walker; and whereas, to secure the payment of such note or notes, he has heretofore, and intends hereafter, to deposit collateral securities; and whereas such collaterals were given and are hereafter to be given, to secure the payment of specific notes; Now, therefore, for the purpose of more fully securing the said International Mutual Trust Company, I do hereby agree that all and singular the collaterals given by me, or to be given as aforesaid, shall, at the option of said International Mutual Trust Company, apply generally to all notes held at any time by said Trust Company, executed by me or said H. H. Walker, and shall also apply and be considered collaterals to secure the payment of any note or notes negotiated for my account by said Trust Company.

SAMUEL J. WALKER."

That by virtue of this contract said collateral note of said Badger has continued a general collateral to secure any indebtedness said Walker might at any time thereafter owe this defendant or that of said H. H. Walker.

That said Walker since the making of said contract has become largely indebted unto defendant upon certain promissory notes, numbers, dates and amounts as follows:

1. No. 2013, 30th Dec., 1871, for $16,748.
2. No. 2009, 30th Dec., 1871, for $10,000.
3. No. 2797, 20th Nov., 1872, for $4,000.
4. No. 2796, 20th Nov., 1872, for $4,000.
5. No. 2795, 20th Nov., 1872, for $4,000.
6. No. 2430, 24th Nov., 1872, for $5,000.
7. No. 2529, 20th Jan., 1873, for $6,000.
8. No. 2537, (Date not given) for $6,000.
9. No. 2612, 14th March, 1873, for $7,500.
10. No. 2629, 27th March, 1873, for $6,000.

11. No. 2659, 4th April, 1873, for $5,000.
12. No. 2701, 15th April, 1873, for $4,000.
13. No. 2741, 29th April, 1873, for $5,000.
14. No. 2640, 29th April, 1873, for $5,000.
15. No. 2698, 15th April, 1873, for $1,000.
16. No. 2822, 29th May, 1873, for $8,000.
17. No. 2893, 20th June, 1873, for $10,000.
18. No. 3151, 18th Sept., 1873, for $12,500.
19. No. 3082, 4th Sept., 1873, for $10,000.
20. No. 3276, 17th Jan., 1874, for $10,000.
21. No. 3082, 4th April, 1874, for $8,000.
22. No. 3394, 17th March, 1874, for $41,755.67.

That said notes are due and payable and that complainant is entitled to the benefit of said collateral security, after the same shall cease to be a security for the said promissory note so owned and held by said Frey.

That Frances M. Wilshire, Joseph W. Wilshire, William M. Wilshire, Sarah Wilshire, Ella Pomeroy, Fannie Pomeroy, John H. Young, George Wilshire, John G. Rogers and Samuel J. Walker, claim to have some interest, but whatever interest they may have therein, is subject and subsequent to your orator as hereinbefore set out.

Prayer that they and David Frey may answer, without oath, that a decree may be entered directing said premises to be sold, and the proceeds applied to the satisfaction of indebtedness due complainant and in the extinguishment of collateral note secured by said trust deed, that the rights of all parties may be foreclosed and sale made by one of the masters in chancery.

Prays for a rule on them to answer by certain day.

Answer, filed May 10, 1877, of Samuel J. Walker, to the cross-bill, filed April 12, 1876, of the International Bank, in No. 18,556.

That a bill of complaint was filed in said cause which he hath answered and said cause is pending.

That he is not indebted to said complainant and insists that it will so appear upon a full, fair and equitable accounting between them.

He admits that the said complainant has now in its possession under its control a large number of notes executed by him and others, and among them the notes alluded to in said bill of complaint, which were delivered into the custody of said complainant as security for the payment of moneys loaned to this defendant by it upon the conditions, arrange-

ments, and agreements hereinafter more particularly set out; that this defendant did, at the time of making such loans and extensions, and renewals of loans made, sign papers as prepared for his signature by the officers of the said complainant, and without always knowing the contents therefor, and in that way signed the notes in said cross-bill set out so far as they contain any agreement touching a penalty as liquidated damages.

That all of the transactions and dealings between him and the complainant were based wholly upon the loan or forbearance of money.

That there was no special circumstances out of which any claim could possibly be set up for damages other than arises from the non-payment of moneys loaned or forborne, and the clauso (for the payment as a per centum as damages) is and was designed on the part of said complainant as a cloak and device under which, if such moneys so loaned or forborne, would if not paid at maturity, yet yield them a greater rate of interest on such moneys than is allowed by law.

And he, further answering, says that he commenced doing business with the said corporation in or about the year 1868, and continued the same until some time in 1874; that this defendant was during all that time extensively engaged in the buying and selling of real estate in the city of Chicago and its vicinity, in the course of which he was obliged to use, and did use, large sums of money, and in the carrying out of his purchases was compelled to and did borrow moneys from divers persons and banks in the city of Chicago, and among them the said complainant, and executed to the complainant, his own notes on account of loans and extensions of loans, and also those of Henry H. Walker, either alone or in connection with this defendant; but this defendant expressly charges and states that whether the notes upon which the said complainant loaned or extended the loan of money, were the notes of defendant, or of him and Henry H. Walker, or of Henry H. Walker alone, the transactions in which the same came to the possession of the said complainant concerned this defendant individually, and the use of the name of said Henry H. Walker was an accommodation for the use and benefit of this defendant, and as a security for him exclusively; all of which was well known to and understood by said complainant.

And this defendant, further answering, says that he did, from time to time during the period aforesaid, execute and cause to be executed various deeds of trust to secure the pay-

ment of other notes deposited and left with said complainant, as collateral security for the payment of the notes upon which loans had been negotiated by the defendant with said complainant, so that in many, if not in all cases, the said complainant held duplicate obligations for the money so borrowed of him, the notes so given as collateral security being in most cases much larger in amount than the sum actually borrowed, and the defendant also from time to time deposited with said complainant various notes and obligations of other persons, some of whi.h were secured by mortgages or deeds of trust on real estate, and others of which were not; and this defendant also states that although a large amount of the loans so made to him by said complainant have been repaid specifically, yet the said complainant has for the most part of the notes and other securities given to it by this defendant, and claims and pretends that the same are unpaid.

And this defendant, further answering, gives notice under the statute that he intends to defend against all of the contracts set out and alluded to in said bill of complaint, and sued upon in this cause by said complainant on the ground that they and each and all of them are usurious.

And he further says that all loans of money and extensions and renewals of loans of money made or obtained by this defendant from said complainant, were made and obtained under and in pursuance of corrupt, unlawful, and usurious agreements and understandings in each and every case between said complainant and this defendant, to the effect that this defendant should pay said complainant for the loan and forbearance of said moneys from time to time, interest thereon at a greater rate than ten per cent., and at and after the rate of one and a half and two per cent., a month and upwards, and extensions and renewals of said loans were made and secured upon agreements for actual payments in each case of unlawful and usurious interest, and at rates greater than ten per cent. per annum.

And he is unable, for the reasons hereinafter fully stated and set forth, to give any particular description of the notes and obligations of this defendant and others given by him to the said complainant in the course of his dealings with it as aforesaid, or of the collateral notes, mortgages and deeds of trust deposited with said complainant as security for the payment of the same, nor is he liable, from recollection or otherwise, to state as to whether the papers set forth in the bill are therein correctly copied or set out, and leaves the

complainant to his proof. He denies that he is either legally or equitably indebted to the said complainant to the amount of said notes, and insists and states that he is and was at the time of exhibiting said bill entitled to larger credits upon said notes and for the payment made thereon, and for other large sums of money paid to said complainant over and above the lawful rate of interest for the loan and forbearance of moneys loaned to this defendant by complainant as well *as* upon said notes and obligations, as upon other notes and obligations in the course of his dealings with it (by it transferred to other parties and paid by the defendant to them) in pursuance of the unlawful, corrupt, usurious agreements and understandings aforesaid between said complainant and this defendant, and which sums so paid should in equity and gook conscience be credited to this defendant in the account to be taken in this cause upon the princip*le* of said loans as such payments were from time to time to be made.

And this defendant, further answering, says that in course of his business and transaction aforesaid, and for the convenience of the same, he kept with said complainant a bank deposit account in which he from time to time deposited large sums of money, checks and drafts, and other evidences of money due him, such as are usually treated as money in such accounts and in which were frequently also deposited the proceeds of the loans negotiated by him as aforesaid from the said complainant.

That from about the year 1870 up to the year 1874, and while this defendant transacted business with said complainant, the amount of his deposits so made with said complainant was very large, aggregating many millions of dollars.

That in addition to the checks drawn by this defendant from time to time in the usual course of his business, upon and against his said deposits which were properly chargeable to him in his accounts, the said complainant made or caused to be made against his said account various other unlawful, unusual and improper charges, without the consent or authority of this defendant. That the said complainant never furnished any bank pass-book such as is usually furnished and kept between a bank and its customers. That this defendant trusted wholly to the complainant to keep the accounts between them, and he did not during his said dealings with the complainant keep any proper account, record or memorandum thereof, and so much

thereof as he did keep were in a great measure destroyed by the great fire of October, 1871.

That in consequence of his failure to keep and preserve full and accurate statements of his dealings and transactions with said complainant he has at no time been able to determine, without the assistance of the complainant, the state or condition of his accounts with it, and being always occupied with his trades and negotiations incident to his business he found no opportunity to investigate the condition of his account until after the financial panic of September and October, 1873, by which, in common with others, he was greatly embarrassed.

That at various times pending his dealings with said complainant there was presented to him by the officers and agents of the complainant papers purporting to be partial statements of the accounts with the said complainant, and some such papers may have been endorsed by this defendant as if in approval thereof, but defendant says such endorsements, if made, were without examination by him and solely upon the representation of the correctness of such statement by the complainant and with the intention of investigating the same, together with the whole of his account, with said complainant at some future time. That this defendant at different times signed checks upon said complainant at its instance and request and delivered the same to it without receiving anything therefor, upon its representation that said checks were necessary to the adjustment of his account with it.

That the check so signed and delivered by him amount*ing* in the aggregate to many thousand dollars, and this defendant believes and charges that the same were obtained from him as aforesaid for the purpose of covering up and concealing the improper, unlawful, and extortionate charges made by said complainant against this defendant without his knowledge or concurrence and with the intention of using the same as vouchers in the settlement of his accounts which would otherwise show large balances to his credit.

That said complainant, its officers and agents, well knew that this defendant was dealing with said complainant in a very careless and unbusiness-like manner, relying upon their good faith and integrity, and that he had no full or sufficient record of his transactions with it, and no bank book showing the amounts of his various deposits, and that they wrongfully and fraudulently made use of such knowledge and of his confidence in their honor and integrity to

make the said improper, unlawful, and extortionate charges against him, and to procure his signature and apparent admission thereto and vouchers therefor, expecting that no investigation thereof could or would be had, and that the results of their fraudulent practices would ultimately be acquiesced in by this defendant.

And this defendant, further answering, says that he has recently applied to the complainant and requested a statement from it of his accounts and dealings with it and a return, or at least an inspection, of the checks, receipts, and other papers relating to his accounts in its possession, and also had requested permission to examine the accounts of this defendant upon the books of said complainant, and the checks, receipts, and other papers aforesaid, in connection with an experienced and skillful accountant, for the purpose of preparing a statement of his said accounts and dealings, at his own expense; but said complainant, by its officers and agents, has declined to grant said requests or any of them, sometimes pretending and claiming that the books of said complainant are imperfect, and that portions of them are mislaid or cannot be found, and at other times that its accounts with the defendant are incomplete and in great confusion, so that the just balance cannot be determined thereby within a large amount of money, to-wit, the sum of two hundred thousand dollars; but defendant believes and charges that all the books of said complainant relating to its accounts and dealings with the defendant are in its possession and control, and that they will, unless fraudulently changed and altered, show in what manner the transactions between it and the defendant were conducted, and will enable this defendant to point out and show the improper, iliegal, usurious, and extortionate charges made against him by the said complainant, and that by means of said books and the checks, receipts, and other papers in the possession of the said complainant, the account between this defendant and said complainant can be fairly and equitably adjusted.

And this defendant, further answering upon this belief, charges it to be true that a careful investigation of the accounts between said complainant and this defendant will show that this defendant is entitled to set off against the pretended claims of the said complainant against him, a very large sum of money that this defendant has paid to said complainant for the loan and forbearance of moneys upon unlawful, corrupt and usurious agreements therefor,

the sum of at least four hundred thousand dollars, over and above the lawful rate of interest, under the statute of this State, which sum should be credited upon the principal of the claims presented against him by said complainant in its cross-bill of complaint.

And this defendant further insists that it is true and the investigation would show it, that the said complainant is actually indebted to this defendant upon his account with it in the further sum of two hundred thousand dollars, which this defendant is entitled to offset against any just claim which can be presented against him by said complainant, and which sums are largely in excess of the debt pretended to be due by this defendant to said complainant, as claimed by the notes and obligations set out or alluded to in said cross-bill.

And this defendant denies refusing to come to any accounting with said complainant; that, on the contrary, he has frequently endeavored to procure such an accounting, and has been unable to do so, and that he is now ready and willing to have an accounting with said complainant under the order and direction of this court.

Order of July 6th, 1877.

Title of cause. No. 18556.

"And now, this cause having come on this day to be heard, and the Court having announced the principles governing the same.

"Now, therefore, before entering a final decree herein, the Court refers this cause to Walter Butler, one of the Masters in Chancery of this Court, for the sole purpose of ascertaining the amount due upon each principal note, as the same may be ascertained from the evidence heretofore adduced herein, except the said principal note, number 30820, bearing date, April 4th, 1874, being for the sum of eight thousand dollars, and he is hereby directed to compute such amount, so due upon each principal note and each collateral note, with the exceptions hereinbefore stated.

"And he is further directed to permit the said Samuel J. Walker to select the principal notes belonging to said bank, upon which to apply the fifteen thousand dollars, ($15,000), paid to the said bank by the check of Baird and Bradley, bearing date, the day of , A. D., 1874.

"And the said Samuel J. Walker, having now elected in open Court to have said International Bank charged with the net proceeds of the sale of the premises, ordered by this

Court to be sold in a certain cause, heretofore pending in this Court, wherein said International Bank was complainant, and Frederick Haskell, John Barker, Samuel J. Walker and others were defendants, which such premises were purchased at such sale by said International Bank, the said master is directed, after deducting all costs and expenses of foreclosure of said premises, to permit said bank, by its officers to select the principal notes, upon which to have said net proceeds applied.

"And the said master is further directed to take an account of all moneys collected by said bank upon collaterals special to all the above mentioned principal notes, as the same appear from the evidence now taken, and apply the same upon the principal notes, for which they were specially pledged.

"And said master shall also take an account of all sums paid upon general collaterals held by said bank, as such payments appear from the evidence heretofore adduced herein, and apply the same upon the principal notes so held by said bank, as it may appear from the evidence already adduced that said bank has heretofore chosen to apply them, or, if said bank has not applied them, that said master shall apply the same as said bank by its officers may before the master elect to apply them; when partial payments have been made the master shall follow the usual rule of computation.

Where payments have been made to said bank on general collaterals, the bank shall be charged at the rate of six per cent. per annum thereon. The master shall compute interest upon said principal notes that bear interest from date at the rate such notes bear prior to maturity from the time to which interest has already been paid, and upon said principal notes that do not bear interest from date, at the rate of six per cent. per annum from the date to which interest was last paid, and upon all said collateral notes he shall compute interest according to their terms.

"The said master is further directed not to consider the question of usurious payments of interest upon any of said notes.

"The court further finds that at different times during the continuance of the dealings between Walker and the International Bank, accounts were presented to said Walker by the bank of amounts debited and credited to him upon the books of the bank, and that said accounts were retained by Walker without objection on his part, made either to the

aggregate or the various items of said accounts, and up to the time of the commencement of this litigation no objections had been made to the same, and that said accounts are not to be investigated by the master as to such general items, but said Walker may be allowed to prove if he can that there have been items included fraudulently in said accounts. or that there are specific credits to which he is entitled in said accounts."

Master's Report, filed February 2d, 1878.

In pursuance of order of court heretofore entered in the cause, presents "a statement in tabulated form, showing the principal notes described in the bill in this cause. The collateral notes securing the payment of the same, the trust deeds securing the payment of said collaterals, and also showing all amounts paid on each of said notes, and the amount now due upon the same. In finding the amount now due thereon I have taken into consideration all the testimony taken in said cause."

Principal note, Ex. 227, $5,000. Interest from October 1st, 1873, $1,286.66, total amount $6.28. 66.

Collateral note, Ex. 228, securing Ex. 227. Principal, $6,-666.66. Interest from January 5th, 1871, $3,748.12, total $10,414.78.

"Bank introduces principal notes to obtain surplus as follows:"

Ex. 40, Prin. $4,000, Int. from October 12th, 1873, $1,022.-02, total $5,022.

Ex. 41, Prin. $10,000, Int. from October 26th, 1873, $2,-531.66, total $12,531.66.

Ex. 42, Prin. $16,748, Int. from October 26th, 1873, $4,-240.03, total $20,988.03.

Ex. 43, Prin. $6,000, Int. from October 22d, 1873, payments on balances credited, and balance reported due January 15th, 1878, $6,423.98.

Ex. 45, Prin. $10,000, Int. from October 21st, 1873, $2,540, total $12,540.

Ex. 48, Prin. $6,000, Int. from November 14th, 1873, $1,-501, total $7,501.

Ex. 50, Prin. $6,000, Int. from November 14th, 1873, $1,-501, total $7,501.

Ex. 53, Prin. $5,000, Int. from October 1st, 1873, $1,-386.66, total $6,386.66.

Ex. 54, Prin. $8,000, Int. from October 28th, 1873, $2,-022.67, total $10,022.67.

Ex. 55, Prin. $4,000, Int. from October 17th, 1873, at ten per cent. $1,697.62, total $5.697.72.

Ex. 56, Prin. $4,000, Int. from October 17th, 1873, at ten per cent. $1,697.60. total $5,697.62.

Ex. 57, Prin. $4,000, Int. from October 17th, 1873, at ten per cent. $1,697.62, total $5,697.62.

Ex. 58, Prin. $5,000, Int. from October 26th, 1873, $1,-265.83, total $6,265.83.

Ex. 59, Prin. $5,000, Int. from October 26th, 1873, $1,-265.83, total $6,265.83.

Ex. 60, Prin. at November 11th, 1873, $7,500, application of part of Baird & Bradley payment, as of November 11th, 1873, leaves Ex. 60 paid.

Ex. 61, Prin. at November 6th, 1873, $10,000, balance Baird & Bradley payment, $8.012.50, Int. to September 2d, 1874, $68.04, amount $2,085.54, deduct payment of $2,500 paid September 2d, 1874, balance in Walker's favor, to be applied on other indebtedness $415.46. (But the Master does not apply it.)

Ex. 63, Prin. $5,000, various payments are credited and balance due is $1,113.18.

Ex. 64, Prin. $1,000, various payments are credited and balance due is $59.83.

Ex. 65, Prin. $12,500, Int. from November 17th, 1873, $3,120.83, total $15,620.83.

Ex. 66, Prin. $10,000, Int. from March 21st, 1874, $2,290, total $12,290.

Ex. 67, Prin. $41,755.67, Int. is computed on this at ten per cent., from March 17th, 1874, and various credits allowed, including "Proceeds of Barker and Haskell sale, January 16th, 1877," balance due reported at $8,151.57.

Ex. 67 *A.*, Prin. $7,000, Int. from September 28th, 1873, at ten per cent., $3,007.37, total $10,007.37.

Ex. 67 *B.*, Prin. $5,000, Int. from October 30th, 1873, at ten per cent., $2,104.16, total $7,104.16.

The report is dated January 15th, 1878.

It is followed by a statement that notice was given to file exceptions to the report, which notice accompanied the report. No exceptions were filed.

Final decree 28th February, 1878, in 18556.

Cause came on to be heard on pleadings, etc., and upon depositions, proofs, and exhibits filed herein, and upon evidence heard in open court, and upon the report of Walter Butler, Esq., a master in chancery, to whom this cause was heretofore referred, to state an account. The court finds

therefrom the equities of the case against Samuel J. Walker and against the Wilshires dismisses his cross-bill and their bill, and further, that Walker is indebted to Frey upon the note made by him, No. 2533 for $5,000, dated July, 1873, payable 1st April, 1873, to the order of the said International Bank, and is entitled to interest at 6 per cent. thereon, from 1st October, 1873, the time to which the last payment of interest was made thereon; that the bank, for a valuable consideration, indorsed it to said Frey, that there was due said Frey from said Walker thereon $6,286.66 on 15th January, 1878, the date of the Master's report, which still remains due. That Walker indorsed and deposited with said bank to secure said note, the note of A. C. Badger, dated 5th January, 1871, for $6,666.66 payable to S. J. Walker, one year after its date, with interest at 8 per cent., and there was due on this last mentioned note $10,414.78, on the 15th Jan., 1878, the date of said Master's report. That to secure this last mentioned note said Badger and Elvira C., his wife, made to John G. Rogers a trust deed conveying to him for the purpose aforesaid the E. ½ of block 32, in C. T. subdivision of E. ½ S. 41, T. 39, N. R. 14 E., Cook County, Ill., which deed was recorded 7th January, 1871. That Frey is entitled to have this deed foreclosed and the premises sold to satisfy the note secured by said trust deed and the proceeds applied on the said principal note to satisfy the amount due him. That the indebtedness evidenced by said principal note was originally created on or about 6th January, 1871, and was evidenced by the note of S. J. Walker, and the indebtedness so created has continued in existence and is now evidenced by the said principal note to belong to said Frey. That the said Badger note was originally pledged to said bank on or about 6th January, 1871; that by agreement between S. J. Walker, and said bank, all notes pledged by him to it or the International Trust Company, after the satisfaction of the principal indebtedness for which specially pledged were to be held as a general collateral to secure all indebtedness at any time due from S. J. Walker unto said Mutual Trust Company, or said bank, and that by virtue of said agreement said bank is entitled to any surplus that may remain upon the sale of the premises, after the satisfaction of the principal note for which the Badger note was specifically pledged; that said Trust Company, now said bank, has continued in possession of said collateral ever since it was originally pledged and has ever since been

entitled to hold the same as security for Walker's indebtedness to it.

"That said Samuel J. Walker was indebted unto the said International Bank on January 15, A. D. 1878, the date of said master's report, in the sum of $172,474, which still remains due and unpaid, and said bank is entitled to whatever surplus may remain upon the foreclosure of said premises after the satisfaction of said principal note of said David Frey, not exceeding the amount so found due upon said collateral note."

That all the material allegations in the said supplemental cross-bill of David Frey are true; that the Court has jurisdiction of all the parties hereto, and of the subject matter hereof.

"It is therefore ordered, adjudged and decreed by the Court that said cross-bill of said Samuel J. Walker and said original and supplemental bill of George Wilshire and others, be dismissed for want of equity, and that the report of said master be ratified and confirmed."

The decree then directs the property to be sold unless the amount due on the Badger note is paid into court by some of the defendants.

"That out of the proceeds of such sale the master shall retain his commissions and disbursements, and pay to the clerk of the court the costs of this suit to be taxed, and he shall pay to said David Frey the sum found due to him as aforesaid, with legal interest from January 15th, 1878, and if any portion shall remain in his hands of such proceeds, he shall pay out of the same unto the said International Bank a sum which shall be equal to the difference between the amounts so to be paid unto said David Frey and the amount so found due upon said Badger note with interest, and if any shall remain in the hands of said master after the above payments, he shall pay the same over unto the other parties herein, as may be hereafter directed; and it is further ordered and adjudged that said David Frey have a decree against said S. J. Walker for any balance of money that may be found due him herein, after said sale and application of proceeds as aforesaid, and that execution issue for the collection of such balance when ascertained."

All of them objected to by assignee. Objection overruled and exception taken.

THE ASSIGNEE'S EVIDENCE.

Decree in this cause of April 25, 1878, set out as part of the record, (ante R. p. 67.)

Order of Appellate Court reversing that decree filed April 11, 1861, (ante R. p. 74.)

Offer of proof: The assignee also offered to prove each and all of the same facts, matters and things, instruments in writing and records stated and set forth in that part of his answer filed Nov. 30, 1883, to the supplemental bill of the bank commencing with the words, "that at the date," in line 27 of page 3, (R. p. 222,) to the words, "been rendered," in line 27 of page 14 inclusive, (R. p. 236,) and in the amendments to said answer from the 1st page, (R. p. 347,) to the end of 26th page, (R. p. 378,) inclusive separately and severally considered, which was objected to by said complainants and such objection sustained by the Court, and each and all of said matters, etc., separately and severally considered, excluded, to which ruling the said assignee then and there excepted. And said assignee also read: *Proceedings in International Bank v. Brennock case, G. No. 15550. Exhibit H. to Sup. Bill of Assignee.*

Bill, General No. 15550, filed March 19th, 1875, by the International Bank of Chicago, states:

That it is a corporation existing under the laws of Illinois, formerly known as the International Mutual Trust Company. That Samuel J. Walker is indebted to it on a promissory note, (setting out a copy), No. 2612, dated March 14th, 1873, for $7,500, payable four months after the date thereof to the bank, with interest at 10 per cent. after due, "and in case this note shall not be paid within three days after maturity thereof, interest shall thenceforth be charged and paid at the rate of twenty-four per cent. per annum, such rate being agreed upon as the measure of liquidated damages, for the non-payment hereof at maturity," and reciting the deposit as collateral to secure the payment thereof, note for $10,000, by H. H. Walker, secured by trust deed to Francis A. Hoffman, on block 15, N. E. S. W. 5, 38, 14, 3. That in order to secure the payment of said note, said S. J. Walker endorsed, pledged and delivered to plaintiff, a certain other note by Henry H. Walker, (setting out a copy dated April 26th, 1870, for $10,000,) at two years, with interest at 8 per cent., to the order of S. J. Walker. That to secure this $10,000 note, into whosoever hands the same might come, S. J. Walker, on the 26th day of September,

1870, made to Francis A. Hoffman a deed of trust, conveying to him, for the purposes aforesaid, the premises in Cook County, Illinois, described as block 15, in Packer's subdivision of N. E. ¼, of S. W. ¼, S. 5, 3, 38, N. R. 14 E. recorded September 26th, 1870. That neither of said notes have been paid. That the $10,000 note and trust deed were originally endorsed and pledged to it, on or about 26th of September, 1870, for the purpose of securing a certain other note, date September 26th, 1870, for $7,500, that the indebtedness evidenced by this last $7,500 note has never been paid, but that the evidence thereof was changed from time to time, until the $7,500 note, No. 2612, first set out, was given in lieu of the former evidence of indebtedness, and in which said $10,000 note was continued as a special pledge, and still remains specially pledged to secure the debt aforesaid. That said note and trust deed were also held as a general pledge or collateral by it, to secure, it whatever debt was there or might thereafter become due from said S. J. Walker to it, in accordance with the agreement, of which the following is a copy, sets out "blanket agreement," dated July 7, 1869, (same as R. p. 7.)

That after the change in the name to confirm the former agreement, S. J. Walker executed to it another "blanket" agreement, dated July 4th, 1873, of same purport as the preceding, sets out that agreement, (same as R. p. 7.)

That at the time when said note of $10,000 was so pledged to it, S. J. Walker was largely indebted to it, in an amount far exceeding the amount of said $10,000 note, and the same indebtedness, as it then existed, continues to exist, and remains unpaid to a much larger amount than the amount now due thereon. That John Brennock, Julius Rosenthal and Joseph Tabor claim some interest in or to the premises above described, either as subsequent grantees, mortgagees, trustees, incumbrancers or otherwise, but that whatever interest they have in and to said premises is subsequent to and subject to the rights of plaintiff in the premises, that S. J. and H. H. Walker refused to pay either of the notes set out, and it is entitled to have premises sold and proceeds resulting therefrom applied upon debt due it from S. J. Walker.

Prayer. Answer without oath, for a decree directing the premises to be sold by the master, "and the proceeds thereof applied towards payment of the indebtedness of S. J. Walker to it, and that the defendants, and all persons under them, be barred and foreclosed of all right and equity of

redemption, and for other and further relief, and for process against John Brennock, Samuel J. Walker, Amanda M. Walker, Henry H. Walker, Francis A. Hoffman, Julius Rosenthal and Joseph Tabor.

Answer of John Brennock to bill in 18550, filed June 1, 1875.

This is a traverse of the bill and sets up title to the land in question in that suit.

Answer of S. J. Walker, filed October 21st, 1875, in No. 18550 (Ex. "I" to Sup. cross-bill of assignee at R. P.).

Admits that the bank and trust company are identical, —denies his indebtedness to complainant on the note for $7,500, No. 2612, or in any sum, or for any amount whatever. That in the course of a long series of dealings extending through a number of years, between complainant and him, he frequently had occasion to and did borrow money from it, and deposited therefor with it his notes, sometimes for the amounts so borrowed, and frequently for much larger amounts, and to secure the payment of such notes he often deposited with it other notes of himself or of other persons secured by mortgage or trust deed, conveying real estate. That owing to the frequency and magnitude of his dealings with complainant, and that his memoranda of such dealings (in those instances in which he retained memoranda thereof), have been largely lost, and to the fact that the complainant has constantly refused to give him access to its books and accounts, he can neither admit or deny the making of the notes set out in the bill, and calls for proof, admits the pledge of the $10,000 note to complainant, and that it was secured by trust deed to Hoffman on the premises alleged, neither admits nor denies the two $7,500 notes, but avers that they and all others are fully paid.

Admits that from time to time he signed papers presented to him by the officers of the bank, but in the hurry and pressure of business he frequently signed without knowing their contents, relying on the good faith and integrity of bank and its officers.

That in the course of his dealing with the bank he paid in large sums of money which he ought to be, but has not been, credited with in his accounts with it, and without the usury in his dealings they are sufficient to pay all he owes it.

Denies indebtedness to bank at the time he deposited the $10,000, that the debt claimed was wholly composed of

usurious interest, charged by the cemplainant for use of money borrowed by him from it.

That the usury paid by him to it amounts to $400,000, and on a fair accounting the bank will be found indebted to him. That he always has been willing to come to a fair and equitable accounting, but complainant refuses so to do.

That he is not indebted to bank, and is entitled to have said securities surrendered to him.

Order, November 8th, 1875. Ordered that said cause be, and it hereby is referred to Walter Butler, Master, etc., to take proof of all the material allegations in said bill contained, and report the same to this court with all convenient speed, with leave to either party to apply to the court for directions.

Cross-bill of Samuel J. Walker, filed December 3d, 1875, in No. 15550 ("Exhibit K" to Sup. cross-bill of assignee, *ante*, R. p. .)

Sets forth the filing of the original bill and his answer to it. That he had for many years, from some time in 1868 to 1873, kept with said bank, prior to June, 1872, known as the International Mutual Trust Company, a deposit account, and did deposit with it from time to time large sums of money, and drew against such deposits, checks and drafts, some of them to settle pretended balances fraudulently claimed to be due it from him. That during that time he also borrowed large sums of money from it and gave it his notes therefor, of which sums of money some were paid to him and others credited to his account. That such loans were always made and notes given to it upon rates of interest of more than ten per cent. per annum, and were usurious and in violation of the statutes in such case made and provided, and of its charter. That in his accounts with it, it from time to time charged him with various large sums of money upon one pretext or another which were without consideration, and some of them upon a usurious consideration, and others exorbitant, unusual and excessive, as between banker and depositor. That some of said loans of money were paid at maturity, others extended from time to time, some by indorsements on the notes to indicate it, others by new notes, but always being upon an agreement to pay a rate of interest greater than ten per cent. per annum. That he also deposited with said corporation as collateral to said notes, and to secure the payment of the same, divers notes and obligations for the payment of money secured by mortgages or trust deeds on

real estate. That his deposit and discount accounts with it are of long standing, of large amounts and complicated, and to be fully understood need careful examination. That he has at no time had from it the usual bank book, nor has he kept regular books of account in which his dealings with it were set down in detail, so that he could make out and state an account. That he has at all times relied on the good faith and integrity of the officers of said bank in keeping the books thereof, so as to show accurately all his dealings with it. That its officers have at various times made out what they called a statement, and on various pretexts, and under the pressure of his necessities as a borrower of money, and indebted to it, obtained from his signature to them as correct, but he so signed them without a careful and full investigation thereof, and without the opportunity so to do, and he charges that they are full of errors, over-charges, excessive and exorbitant charges, and that he should not be bound thereby. That they have always kept such statements and his checks, paid notes and other vouchers in its own possession, and not allowed him an opportunity to verify and inspect the same, although he has repeatedly requested of said bank and its officers an inspection of books, etc., and he charges that upon a full and fair statement and adjustment of his account with it, including all payments made on account of usurious interest, all the principal notes made by him to it including those held by others to whom it has assigned them, or any of them will, be found fully paid and satisfied, or without consideration, and that he does not owe it anything. That the note set out in the bill as made by him to it, was so made in the course of the dealings and transactions between him and it, and were given either upon the loan of money or the forbearance of money due, or about to fall due, and no circumstances existed justifying the insertion of the "penalty clause," and that that was put in simply as a cloak and cover for usury. That he signed said notes as he would any other presented to him by a bank, because he could not get the accommodation without.

Prayer, answer without oath, that an account be taken in the premises between the said bank and him, and it required to make a full and fair statement and account of all the dealings and transactions between it and him, and if anything shall appear to be due on the notes set out in the bill, then on payment thereof it and the collaterals be surrendered, or if nothing due, or said notes are usurious, then

that the same be delivered to him, and general relief and prayer for process against the bank to answer, etc.

Order of 12th of January, 1876, in No. 18550 (Exhibit L, in Sup. cross-bill of Jenkins in this suit, *ante*, p. 295.)

INTERNATIONAL BANK 15550 v. 1028 JOHN BRENNOCK, et al.	Bill.
and SAMUEL J. WALKER, v. THE INTERNATIONAL BANK.	Cross Bill.

"And now, this day, comes the said International Bank of Chicago, by Rosenthal & Pence, its counsel, and moves the court for direction, as authorized by a former order of this court, as to whether it or its officers shall be compelled to produce the books, papers and vouchers, as called for in a subpœna *duces tecum* offered in evidence in said cause, before the Master in Chancery of this court, and marked Exhibit 218.

"And it appearing to the court that Berthold Loewenthal, president of said bank, who had been examined as a witness on behalf of said bank, upon cross-examination by the defendants, refused to produce the same for the reason assigned by him in the following language:

"'I refuse to produce them for the reason, that if produced they would have a tendency to expose the International bank, as well as those claiming under the bank, in these suits upon the notes of Samuel J. Walker, sold and transferred by the said bank to them, to the penal liability of usury or forfeiture of the same, taken by them or contracted for with said Walker, and would have the tendency to subject said bank and said parties claiming under it, to such penalty or forfeiture of usury, and would have a tendency to furnish evidence whereby the franchises and charter of said bank might be forfeited on account of such usury.'

"And it appearing to the court from the record herein that said Samuel J. Walker and other defendants are insisting upon the forfeiture of all interest taken or agreed to be taken by said bank of Samuel J. Walker, in their dealings with each other by virtue of the statute of Illinois, relating to the subject of usury, and are defending against the recovery of any interest by said bank, or its assignees, upon

the promissory notes set out in the pleadings, as made by said Walker to it, and are seeking to have satisfied and declared paid said promissory notes, by the application of all interest heretofore received by said bank from said Walker, upon the ground that the same was usurious and illegal, and contrary to the statute in such case made and provided.

"And said motion having been fully argued by Rosenthal & Pence, counsel for said bank Loewenthal, and by John N. Jewett, E. C. Larned and W. T. Burgess, counsel for said defendants, and the court being now fully advised in the premises doth sustain the objection interposed by said Loewenthal to the production of the books, papers and vouchers as set forth and described in said subpœna *duces tecum*, unless the said Samuel J. Walker shall, by a stipulation duly signed and filed in this cause, waive the forfeiture of legal interest, so that in taking the account in the cause, interest may be charged against the said Walker upon the loan or forbearance of money to him by said bank, up to and at the legal rate therefor, notwithstanding any forfeiture thereof which he might otherwise be entitled to, and that none of the other parties to this suit shall have the benefit of said books and papers, etc., unless a like stipulation be signed and filed by them respectively. To which ruling of the court the defendants by their counsel now here except.

"And said stipulation in pursuance of said order being now here filed by said Walker, it is ordered that the said International Bank produce before the Master, under the oath of its officers, the books, papers, vouchers, and other written memoranda in its possession, touching the business dealing or transactions had done or transacted by or between it and said Walker, in obedience to the said subpœna, or as may be necessary to a full, accurate and complete statement of the accounts in the case before the Master."

Stipulation, filed 12th January, 1876.

THE INTERNATIONAL BANK v. BRENNOCK et al. } G. No. 15550. Bill and Cross Bill.

It is hereby (under and in pursuance of the order this day made in this cause, but not intending hereby to waive the exception taken to such order) stipulated by said Samuel J. Walker that the forfeiture of legal interest be, and the same

is hereby expressly waived, so that taking the accounts in the cause, interest shall be charged against the said Walker upon the loan or forbearance of money to him, up to and at the legal rate therefor, notwithstanding any forfeiture which the said Walker might otherwise claim or be entitled to. But evidence obtained from books, etc., produced under said order shall not be used by the parties hereto in any other than the causes in which said bank and Walker are interested, and standing upon reference to the Master, W. Butler, Esq.

SAMUEL J. WALKER.

Answer of International Bank to cross-bill of S. J. Walker, filed 31st of January, 1876, in No. 18550. (Ex. M. to supplemental cross-bill of assignee, *ante*, R. p. 299.)

Admits S. J. Walker deposited money and kept an account thereof with said bank, but when it commenced can not state; admits Walker has deposited with it large sums of money, and drew against the same from time to time; denies that any of such checks were to settle to pretended balances, but if to settle a balance it was just and due the bank. Admits that he was also a borrower of money, which was sometimes paid to him and sometimes credited in his account with it, or in other ways as Walker directed; denies that such loans were for a greater rate than ten per cent.

Admits some loans paid at maturity, and others extended, but not at a greater rate than ten per cent.

Admits Walker deposited from time to time with it as collateral to said notes, and to secure the same divers notes and obligations for the payment of money.

Denies that there are any unsettled accounts between it and said Walker, except the unpaid notes held by said bank. That all the book accounts between it and said Walker have been closed and settled upon an account stated between them, and Walker has no longer any right to go into an investigation of his accounts with the bank.

Admits Walker has not had the usual bank book, but that was because he would not have one.

Admits Walker has not kept regular books of account, or that he himself could make out an account of his various transactions with the bank, and admits Walker has always relied on the good faith and integrity of the bank and its officers in keeping its books so as to show accurately all the dealings of Walker with it, and avers that it has so kept

strict account of all its dealings with him. Alleges that Walker has had a fair and full settlement of his accounts with said bank at various times.

Admits that it had many of the checks and paid-up notes of said Walker, but denies that it has all of them. That said checks are proper vouchers to be held by it against said Walker. Denies that it has refused to allow Walker to verify such paid-up notes or checks, and alleges that prior to this suit it allowed him to do so when requested; it admits it now refuses him access thereto as it has a right to do.

Alleges that Walker is indebted to it upon various principal notes now held by it. That it does not deem it of any consequence whether any circumstances existed attending or preceding the loan or forbearance of money so evidenced by said principal notes in said original bill set out that justified said corporation in demanding as damages for the non-payment of such notes at maturity anything more than a legal rate of interest thereon; denies that the notes were taken in the said form as a cover or cloak under which to recover and receive interest for such loan or forbearance at a greater rate than ten per cent. That it always had, and has the right to take promissory notes from said Walker, or any other person, in the form of said notes for the purpose of indemnifying said bank or any person claiming under it for damages resulting from the non-payment of such notes at maturity, and had a legal right to agree with said Walker upon the sum so included as liquidated damages for neglect or delay in the payment thereof.

Order, July 6, 1877. (Exhibit N. to Sup. cross-bill of assignee, R. p. 312, *ante*.)

Title of cause. No. 18556.

"And now, this cause having come on this day to be heard, and the court having announced the principles governing the same.

"Now, therefore, before entering a final decree herein, the court refers this cause to Walter Butler, of the Masters in Chancery of this court, for the sole purpose of ascertaining the amount due upon each principal note, as the same may be ascertained from the evidence heretofore adduced herein, except the said principal note number 3082 B., bearing date April 4th, 1874, being for the sum of eight thousand dollars, and he is hereby directed to compute such amount so due upon each principal note and each collateral note, with the exceptions hereinbefore stated.

"And he is further directed to permit the said Samuel J Walker to select the principal notes belonging to said bank upon which to apply the fifteen thousand dollars ($15,000) paid to said bank by the check of Baird and Bradley, bearing date the — day of ——, A. D. 1874.

"And the said Samuel J. Walker, having now elected in open court to have said International Bank charged with the net proceeds of the sale of the premises ordered by this court to be sold in a certain cause heretofore pending in this court, wherein said International Bank was complainant and Frederick Haskell, John Barker, Samuel J. Walker and others were defendants, which said premises were purchased at such sale by said International Bank, the said Master is directed, after deducting all costs and expenses of foreclosure of said premises, to permit said bank by its officers to select the principal notes upon which to have said net proceeds applied.

"And the said Master is further directed to take an account of all moneys collected by said bank upon collaterals special to all the above mentioned principal notes, as the same appear from the evidence now taken, and apply the same upon the principal notes for which they were specially pledged.

"And the said Master shall also take an account of all sums paid upon general collaterals held by said bank as such payments appear from the evidence heretofore adduced herein, and apply the same upon the principal notes so held by said bank as it may appear from the evidence already adduced that said bank has heretofore chosen to apply them, or, if said bank has not applied them, that said Master shall apply the same as said bank by its officers may before the Master elect to apply them; when partial payments have been made the Master shall follow the usual rule of computation.

"Where payments have been made to said bank on general collaterals, the bank shall be charged at the rate of six per cent. per annum thereon. The Master shall compute interest upon said principal notes that bear interest from date at the rate such notes bear prior to maturity from the time to which interest has already been paid, and upon said principal notes that do not bear interest from date, at the rate of six per cent. per annum from the date to which interest was last paid, and upon all said collateral notes he shall compute interest according to their terms.

"The said Master is further directed not to consider the

question of usurious payments of interest upon any of said notes.

"The court further finds that at different times during the continuance of the dealings between Walker and the International Bank, accounts were presented to said Walker by the bank of amounts debited and credited to him upon the books of the bank, and that said accounts were retained by Walker without objection on his part, made either to the aggregate or the various items of said accounts, and up to the time of the commencement of this litigation no objections had been made to the same, and that said accounts are not to be investigated by the Master as to such general items, but said Walker may be allowed to prove if he can that there have been items included fraudulently in said accounts, or that there are specifie credits to which he is entitled in said accounts."

Master's report, filed February 2, 1878, sets forth that the Master, in pursuance of order of reference heretofore made to him, presents a "a statement in tabulated form, showing the principal notes described in the bill in this cause, the collateral notes securing the payment of the same, in the trust deeds securing said collaterals, and also showing all amounts paid on each of said notes and the accounts due upon the same. In finding the amount now due thereon I have taken into consideration all the testimony in said cause."

Exhibit No. 60, rate six per cent., Prin. at Nov. 11, 1873, $7,500. Application of part of Baird & Bradley payment as of November 1, 1873, $7,500, which leaves Ex. 60 paid.

Collateral note 85, securing Ex. 60, $100,000. Int. from September 26th, 1870, $5,842.21, total, $15,842.21.

"This is the Brennock property, and Walker has applied the $15,000 item toward the satisfaction of the principal note. Complainants claim, however, to have collateral foreclosed and proceeds applied on general indebtedness under blanket agreement. Bank introduces balance of its principal notes as follows:

Ex. 40, Prin. $4,000. Int. from October 12, 1873, $1,022, total, $5,022.

Ex. 41, Prin. $10,000. Int. from October 26th, 1873, $2,531.66, total, $12,531.66.

Ex. 42, Prin. $16,748. Int. from October 26th, 1873, $4,240.03, total, $20,988.03.

Ex. 43, Prin. $6,000. After allowing payments, balance, $6,423.98.

Ex. 45, Prin. $10,000. Int. from October 21st, 1873, $2,-540, total, $12,540.

Ex. 48, Prin. $6,000. Int. from November 14th, 1873, $1,501, total, $7,501.

Ex. 50, Prin. $6,000. Int. from November 14th, 1873, $1,501, total, $7,501.

Ex. 53, Prin. $5,000. Int. from October 1st, 1873, $1,-386.66, total, $6,386.66.

Ex. 54, Prin. $8,000. Int. from October 28th, 1873, $2,-022.67, total, $10,022.67.

Ex. 55, Prin. $4,000. Int. from October 17th, 1873, at ten per cent., $1,697.62, total $5,697.62.

Ex. 56, Prin. $4,000. Int. from October 17th, 1873, at ten per cent., $1,697.62, total, $5,697.62.

Ex. 57, Prin. $4,000. Int. from October 17th, 1873, at ten per cent., $1,697.62, total, $5,697.62.

Ex. 58, Prin. $5,000. Int. from October 26th, 1873, $1,-265.83, total $6,265.83.

Ex. 59, Prin. $5,000. Int. from October 26th, 1873, $1,-265.83, total, $6,265.83.

Ex. 61, Prin. at November 6th, 1873, $10,000. Applies balance of Baird & Bradley check, $8,012.50. Int. to September 2d, 1874, $98.04, making $2,085.54; deducts payment of $2,500 paid then, which leaves a balance in Walker's favor of $414.46 to be applied on other indebtedness (but the Master does not apply it anywhere).

Ex. 63, Prin. $5,000. Applies payments, leaving balance January 15th, 1878, $1,113.18.

Ex. 64, Prin. $1,000. Applies payments, leaves balance January 15th, 1878, of $59.83.

Ex. 65, Prin. $12,500. Int. from November 17th, 1873, $3,120.83, total, $15,620.83.

Ex. 66, Prin. $100.000. Int. from March 21st, 1874, $2,-290, total, $12,290.

Ex. 67, Prin. $41,755.67. Applies payments. Int. at ten per cent.; balance January 15th, 1878, $8,151.57.

Ex. 67 *A*. Prin. $7,000. Int. at ten per cent. from September 28th, 1873, $3,007.37; total, $10,007.37.

Ex. 67 *B*. Prin. $5,000. Int. at ten per cent. from October 30th, 1873, $2,104.16, total, $7,104.16.

Does not report the gross amount due, and reports all exceptions, etc.; overruled. (The rate of interest where not mentioned is at six per cent.)

Final decree April 24th, 1879.

Title of cause, Genl. No. 15550, bill and cross-bill.

The parties came, by their respective solicitors, and by agreement the cause is redocketed. Recites that the cause came on to be heard on the bill of complaint, and answers cross-bill and answers, and replication, and upon depositions filed in said cause, and upon the report of Walter Butler, Esq., master in chancery, and upon exceptions to said report, and upon evidence heard in open court, and the court being fully advised, confirms the said master's report, and it appearing to the court from all the foregoing, the court finds that S. J. Walker, being indebted to the Bank, pledged to it the $10,000 note of September 26th, 1870, described in the bill of complaint made by H. H. Walker to S. J. Walker, and by him about its date duly indorsed. That in order to secure it S. J. Walker, and his wife, Amanda M., made to F. A. Hoffman a trust deed set out in bill of complaint. "That said note and trust deed above described have been in the possession of said complainant for the purpose of securing indebtedness due or to become due it from said S. J. Walker, ever since it was pledged to i as aforesaid. That there was due to said complainant ontthe first day of January, A. D. 1872, and has been due to it ever since, from Samuel J. Walker an amount of money exceeding the amount of $10,000. And that of the same identical indebtedness existing on the first day of January 1872, for which the security aforesaid was pledged, there is now due the sum of $8,532, and that said complainant is entitled to have said premises above described sold and the proceeds thereof applied in satisfaction of said indebtedness so due unto it; and the said John Brennock consents to the entry of this decree for such purpose. It is therefore ordered "that said cross-bill of Samuel J. Walker be dismissed for want of equity," and that in case said sum of $8,532 is not paid in 20 days, that a sale of the premises described in the trust deed be made by the master, the usual decree of foreclosure following.

If any surplus after satisfying costs, interests, and $8,532 the master to bring it into court for distribution.

Stipulation.. It is agreed by the parties that in making up the transcript of the record on appoal or writ of error the above papers, if copied in the pleadings of parties, need not be again copied.

Admitted that replications putting said cause at issue were duly filed.

Report of Master in Wilshire v. Bank put in above by International Bank (R. p. 611), filed Feb'y 2, 1878.

Report of Master in this case of same date (R. p. 113).

Admitted that the exhibits *Principal Notes* referred to in said three reports of the Master, Butler, are the same in all three of the cases, *Bank v. Walker, Wilshire v. International Bank and International Bank v. Brennock.*

The assignee in connection with this statement in the decree in this cause, viz:

"That the said International Bank has introduced all of the collaterals held by it for the purpose of securing the indebtedness so due to it by said Samuel J. Walker in evidence in this cause. That since the commencement of this suit, certain of those collaterals have been foreclosed and the premises securing the same have been ordered to be sold by the decree of this court in various suits heretofore pending in this court:"

Offered to prove that among those suits referred to in said decree, was the said suit of Wilshire et al v. International Bank et al, No. 18556, to which counsel for Bank objected. Objection sustained, evidence excluded and assignee excepted.

The assignee to show the principal notes and the collateral notes and trust deeds put in evidence in the testimony before the Master, Butler, and at the hearing of the said cases in court before Judge Williams, offered and read in evidence the *three tables* following in lieu of the original papers, and as a statement of the contents thereof.

Table 1.—Principal Notes.

Record Page.	No. Ex.	No. Note.	Date of Note.	Amount.	When Due.	Interest After Due as liquidated Damages.	To Whom Belongs.
3125	1	2012	Dec. 30, 1871.	$10,000 00	90 days.	20 per ct.	A. Bauer.
3129	2	1225	Nov. 7, 1870.	5,000 00	"	"	"
3133	3	2422	" 22, 1870.	5,000 00	Feb. 17, '73.	"	"
3137	4	2538	Jan. 18, 1873.	4,000 00	3 months,	24 per ct.	"
3201	16	1018 B	June 19, 1871.	4,000 00	60 days.	20 per ct.	Milier & Liebenstein.
3205	17	1736	July 17, 1871.	4,000 00	2 months,	"	"
3210	18	2233	" 2, 1872.	12,000 00	90 days,	"	"
3214	19	2696	April 14, 1873.	6,000 00	"	24 per ct.	"
3218	20	2697	" 14, 1873.	5,000 00	"	"	Loebnitz.
3223	21	865 C	Dec. 2, 1870.	5,000 00	Feb. 2, '71,	20 per ct.	" several credits.
3228	22	2010	" 30, 1871.	5,000 00	60 days,	"	Schoellkopf.
3232	23	2011	" 30, 1871.	5,000 00	"	"	"
3313	40	2701	April 15, 1873.	4,000 00	"	24 per ct.	International Bank.
3317	41	2009	Dec. 30, 1871,	10,000 00	30 days,	20 per ct.	"
3321	42	2013	" 30, 1871.	16,748 00	3 months,	"	"
3326	43	2629	March 27, 1873.	6,000 00	90 days,	24 per ct.	" several credits.
3332	45	2893	June 20, 1873.	10,000 00	60 days,	"	"
3338	48	2527	Jan. 20, 1873.	6,000 00	"	20 per ct.	"
3343	50	2529	" 20, 1873.	6,000 00	"	"	"
3349	53	2659	April 4, 1873,	5,000 00	"	24 per ct.	"
3353	54	2822	May 29, 1873,	8,000 00	90 days,	"	"
3356	55	2795	Nov. 20, 1872,	4,000 00	6 months,	20 per ct.	"
3360	56	2796	" 20, 1872.	4,000 00	"	"	"
3364	57	2797	" 20, 1872.	4,000 00	"	"	"
3369	58	2740	April 29, 1873.	5,000 00	60 days,	24 per ct.	"
3373	59	2741	" 29, 1873.	5,000 00	"	"	"
3377	60	2612	March 14, 1873.	7,500 00	4 months,	24 per ct.	"
3382	61	3082 A	Sept. 4, 1873.	10,000 00	60 days,	"	" credit Sept. 2, 1874, $2,500.
3386	62	3082 B	April 4, 1874.	8,000 00	10 days,	24 per ct.	" several credits.
3390	63	2430	Nov. 24, 1872.	5,000 00	60 days,	20 per ct.	" "
3395	64	2698	April 15, 1873.	1,000 00	90 days,	24 per ct.	"
3401	65	3151	Sept. 18, 1873.	12,500 00	60 days'	"	"
3405	66	3276	Jan. 17, 1874.	10,000 00	"	"	"
3409	67	3394	March 17, 1874.	41,755 67	10 days,	"	" credited $2,906.89.
3414	67 A	2924	June 27, 1873.	7,000 00	90 days,	10 per ct.	" This note executed by J. D Kinney. Guaranteed by Walker.
3417	67 B	2925	" 27, 1873.	5.000 00	4 months,	"	" This note executed by J. D. Kinney. Guaranteed by Walker.
3419	68	2008	Dec. 30, 1871.	8,750 00	3 months,	20 per ct.	Loewenthal.
3424	69	.....	July 11, 1873.	10,000 00	90 days,	24 per ct.	" several credits.
3430	71	2526	Jan. 20, 1873.	5,000 00	"	20 per ct.	E. Koch.
3435	73	2421	Nov. 22, 1872.	5,000 00	Feb. 17, '73,	"	Kohn Brothers.
3439	74	2519	Jan. 18, 1873.	3,500 00	90 days,	"	"
3444	75	2522	" 20, 1873.	5,000 00	"	"	"
3449	76	2716	April 19, 1873.	5,000 00	60 days.	24 per ct.	" several credits.
3453	77	2714	" 18, 1873.	3,000 00	"	"	"
3461	81	2516	Jan. 20, 1873.	6,000 00	Feb. 6, '74,	20 per ct.	Austrian: credit $1,000.
3490	89 217 and 218		Dec. 15, 1870.	18,000 00	Feb. 15, '71,	"	Loewenthal.
3513	94	2405	Nov. 6, 1872.	11,000 00	90 days,	"	Fleischman; $1,000 paid April 24, '74.*
3525	97	.....	July 30, 1873.	10,000 00	60 days,	24 per ct.	B. Loewenthal.
3539	100 369 and 371		Dec. 15, 1870.	15,000 00	Feb. 15, '71,	20 per ct.	"
3703	197	2985	July 19, 1873.	6.000 00	60 days,	24 per ct.	Kohn Brothers.
3706	199	2986	" 19, 1873.	6,000 00	"	"	"
3711	202	2514	Jan. 18, 1873.	15 000 00	"	20 per ct.	"
3719	209	2728	April 23, 1873.	8,000 00	90 days,	24 per ct.	"
3743	227	2503	Jan, 18, 1873.	5,000 00	April 1, '75,	20 per ct.	David Frey.

* On margin of note, in pencil, following memoranda: "Note H. H. Walker $5,000 released, and notes amounting to $3,700 substituted."

All the principal notes have indorsements of the new maturities, similar to exhibit 1, which has, March 30th, '72. May 30th, '71. July 30th, '71. Sept. 30th, '71. Nov. 30th, '71. March 1st, '73. May 1st, '73. Aug. 1st, '73. Sept. 29th, '73.

Table I.—Principal Notes.

No.	Note.	Date of Note.	Amount.	When Due.	Interest After Due Specified.	To Whom Payable.
3120	2012	Dec. 26, 1871.	$10,000 00	20 days.	30 per ct.	A. Bruer.
3140	2028	Nov. 7, 1870.	5,000 00	"	"	"
3161	2072	" 22, 1870.	5,000 00	Feb. 17, '72.	"	"
3187	2076	Jan. 16, 1871.	4,000 00	3 months.	24 per ct.	
3201	1014 N	Dec. 19, 1871.	4,000 00	60 days.	30 per ct.	M. Miller & Liebenstein.
3210	1030	" 17, 1871.	4,000 00	2 months.	"	"
3216	2088	" 5, 1871.	12,000 00	90 days.	"	"
3218	2089	April 15, 1872.	4,000 00	"	24 per ct.	Doebelin.
3219	2090	Dec. 14, 1871.	5,000 00	"	"	"
3222	2091 C	" 26, 1871.	2,000 00	Feb. 5, '72.	30 per ct.	several creditu.
3224	2092	" 30, 1871.	6,000 00	60 days.	"	Schoellkopf.
3232	2101	April 15, 1872.	5,000 00	"	24 per ct.	International Bank.
3241	2099	Dec. 30, 1871.	10,000 00	30 days.	30 per ct.	"
3243	2103	" 31, 1871.	16,744 00	3 months.	"	"
3250	2070	March 27, 1872.	6,000 00	90 days.	24 per ct.	several creditu.
3252	2093	June 15, 1872.	10,000 00	60 days.	"	"
3253	2097	Jan. 20, 1872.	4,000 00	"	30 per ct.	"
3254	2098	" 30, 1872.	5,000 00	"	"	"
3256	2100	April 15, 1872.	6,000 00	90 days.	24 per ct.	"
3257	2102	May 20, 1872.	5,000 00	"	"	"
3258	2104	" 20, 1872.	4,000 00	"	"	"
3259	2105	" 20, 1872.	4,000 00	"	"	"
3260	2106	" 20, 1872.	4,000 00	"	"	"

Table 2.—Collateral Notes.

Record Page.	No. Ex.	Collat. to Ex.	Date of Note.	Amount.	When Due.	Rate of Interest.	MAKER.	
3142	5	1, 22, 23, 41, 42, 68.	Dec. 29, 1871.	$50,000 00	18 months.	8 per ct.	S. J. Walker.	
3142	6	"	"	50,000 00	"	"	"	
3153	8		June 24, 1872.	50,000 00		"	"	
3165	10	2	Nov. 2, 1870.	10,000 00	1 year.	"	H. H. & S. J. Walker.	
3177	12	3 and 73	June 22, 1870.	15,000 00	"	"	H. H. Walker.	
3188	14	4	Jan'y 2, 1873.	7,500 00	2 years.	10 per ct.	S. J. Walker.	
3237	24	16, 40	Aug 18, 1870.	12,500 00	1 year.	8 per ct.	H. H. Walker.	
3247	26	17	May 15, 1871.	5,334 00	2 years.	"	F. A. Riddle.	
3258	28	18	Oct. 24, 1870.	6,000 00	1 year.	"	Hansbrough.	
3258	29	18	"	6,000 00	2 years.	"	"	Across face of last two notes are written, E. half N. W. ¼ Sec. 4, T. 38 N. R. 13, E. 3d P. M.
3275	31	19 and 20	Aug. 29, 1871.	12,500 00	2 years.	8 per ct.	H. H. Walker.	
3286	33	19 and 20	"	12,500 00	"	"	"	
3298	35	21	Sept. 29, 1869.	6,000 00	1 year.		"	
3331	44	43	Jan'y 2, 1873.	7,500 00	2 years.	10 per ct.	S. J. Walker.	
3335	46	45	"	7,500 00	"	"	"	
3337	47	45	"	7,500 00	"	"	"	
3342	49	48	"	7,500 00	"	"	"	
3347	51	50	"	7,500 00	"	"	"	
3348	52	General.	"	7,500 00	"	"	"	
3429	70	69	Jan'y 2, 1873.	7,500 00	"	10 per ct.	"	
3429	72	71	"	7,500 00	"	"	"	
3459	78	74, 77	"	7,500 00	"	"	"	
3459	79	75	"	7,500 00	"	"	"	
3460	80	76	"	7,500 00	"	"	"	
3464	82	81	"	7,500 00	"	"	"	
3465	83	55, 56, 57	April 10, 1871.	15 000 00	"	8 per ct.	H. H. Walker.	
3474	85	60	Sept. 26, 1870.	10,000 00	"	"	"	
3484	87	53	Jan'y 5, 1871.	6,666 66	"	"	A. C. Badger.	
3494	90	89	June 19, 1869.	12,500 00	1 year.	"	Hansbrough.	
3503	92	89	"	10,000 00	"	"	"	
3516	95	94	Dec. 29, 1871.	20,000 00	12 months.	"	S. J. Walker.	Across face of note following memorandum: Secured by trust deed of this date duly stamped, Lots 33 to 37, Block 13, Dock Addition, two notes each $20,000, to J. G. Rogers. T. D. filed Jan. 4, '72. Endorsed by S. J. Walker.

Table 3.—Collateral Notes.

Number Recorded	No. of Lot	Collat. to Ex.	Date of Note.	Amount.	When Due.	Date of Interest.	MAKER.
3142	5	1, 22, 53, 41, 52, 62,	Dec. 20, 1871.	£20,000 00	18 months.	8 per ct.	S. L. Walker.
3143	6		"	30,000 00	"	"	"
3155	8		June 24, 1872.	30,000 00	"	"	"
3165	10	2	Nov. 2, 1870.	10,000 00	1 year.	"	H. H. & S. L. Walker.
3177	12	3 and 19	June 22, 1870.	15,000 00	"	"	H. H. Walker.
3186	14	4	Jan'y 2, 1872.	7,000 00	2 years.	10 per ct.	S. L. Walker.
3227	24	16, 40	May 17, 1870.	12,500 00	1 year.	8 per ct.	H. H. Walker.
3247	28	17	May 15, 1871.	5,231 00	2 years.	"	R. A. Hamble.
3250	29	18	Oct. 24, 1870.	6,000 00	1 year.	"	Hamborough.
3260	30	15	"	6,000 00	2 years.	"	
3275	31	19 and 20	Aug. 29, 1871.	12,000 00	2 years.	8 per ct.	H. H. Walker.
3286	33	19 and 20	"	12,000 00	"	"	"
3288	35	21	Sept. 20, 1870.	5,000 00	1 year.	"	"
3297	41	42	Jan'y 2, 1872.	7,000 00	2 years.	10 per ct.	S. L. Walker.
3299	43	43	"	"	"	"	"
3301	44	45	"	"	"	"	"
3302	45	46	"	"	"	"	"
3317	47	50	"	"	"	"	"
3318	48	51	"	"	"	"	"
3324	52	General.	"	"	"	"	"
3329	70	66	Jan'y 1, 1872.	7,000 00	"	10 per ct.	"
3339	72	71	"	7,000 00	"	"	"
3340	74	74, 77	"	7,000 00	"	"	"
3350	76	76	"	7,000 00	"	"	"
3360	80	78	"	7,000 00	"	"	"
3361	82	81	"	7,000 00	"	"	"
3365	83	65, 66, 67	April 10, 1871.	10,000 00	"	8 per ct.	H. H. Walker.
3374	85	66	Sept. 20, 1870.	10,000 00	"	"	"
3384	87	23	Jan'y 3, 1871.	6,000 00	"	"	A. C. Bodger.
3404	90	24	June 19, 1869.	12,000 00	1 year.	"	Hamborough.
3409	92	89	"	10,000 00	"	"	"
3516	98	94	Dec. 20, 1871.	20,000 00	12 months.	"	S. L. Walker.

Across face of note following memorandum: "Secured by first deed of this date duly stamped. Lots 33 to 37, Block 13, Dock Addition, two houses each £20,000. C. C. Rogers. T. D. filed Jan. 4, '72. Endorsed by S. L. Walker.

Across face of note are written, Nos. 1 & 2. W. L. Sec. 4. T. 35 S. R. 21 E. 21 P. M.

Table 2.—Collateral Notes—(Continued.)

Record Page.	No. Ex.	Collat. to Ex.	Date of Note	Amount.	When Due.	Rate of Interest.	MAKER.	
3529	98	97	June 20, 1871.	$16,000 00	2 years.	10 after due.	S. J. Walker.	This is a duplicate; the original being destroyed by fire Oct. 9th, 1871. Payable to the order of Adeline Laughton
3543	101	100	May 14, 1868.	20,000 00	12 months.	.....	H. H. Walker.	
3543	103	54	Jan'y 19, 1871.	6,666 66	2 years.	8 per ct.	Badger.	
3549	105	54	" "	6,666 66	1 year.	"	"	
3561	107	58, 59	Aug. 16, 1871.	13,500 00	18 months.	"	H. H. Walker.	
3561	108	58, 59	" "	13,500 00	24 months.	"	"	
3563	110	61, 62	Feb. 15, 1871.	5,200 00	1 year.	"	Riddle.	
3563	111	61, 62	" "	5,200 00	2 years.	"	" $2,500 paid.	
3564	112	61, 62	" "	5,200 00	3 years.	"		
3587	228	227	Jan'y , 1871.	6,666 66	1 year.	"	Badger.	
	122	63	Oct. 22, 1872.	166 66	3 years.	"	Lambert Lues.	
3569	130	64	Feb. 4, 1873.	400 00	"	"	Carl Wandusee.	
3571 to 3601	133 to 152	65		20,000 00			Chicago, Danville & Vincennes R. R. Co. Bonds, $1,000 each.	
3601	153	66	Sept. 18, 1873.	10,000 00			Check S. J. Walker and A. C. & O. F. Badger.	
3602	154						Tr'sc'pt of J'dgment, Ex'bit 153.	
3605	155	66	Sept. 18, 1873.	6,500 00			Note J. D. Kinney.	
3608	156						Tr'sc'pt of J'dgment. Ex'bit 153.	
3619	157	67	July 11, 1873.	8,333 00	Due Oct. 1.		Chicago D. & V. R. R. Co	
3620	158	"	July 22, 1873.	7,500 00	90 days.		"	
3621	159	"	Aug. 11, 1873.	8,625 00	75 days.		"	
3622	160	"	Sept. 9, 1873.	7,350 00	65 days.		"	
3623	161	"	" "	7,350 00	95 days.		"	
3623	162						Tr'sc'pt Judgment, Exhibit 67a.	
3641	163						" " 67b.	
3655	164	43	March 24, 1873.	300 00	3 years.		Jacob Donnermuth.	
3656	166	General.	Jan'y 10, 1868.	25,000 00	18 months.		H. H. Walker.	
3672	176	"	Oct. 24, 1872.	1,066 66	2 years.		Frank Boehm.	
3672	177	"	" "	1,066 67	3 years.		"	
3674	180	"	April 29, 1873.	225 00	"		Geo. Bradford.	
3675	183	"	June 1, 1871.	2,000 00	5 years.		M. C. Baldwin.	
3677	185	"	Nov. 26, 1869.	700 00	1 year.		G. Walsh.	
3678	187	"	May 27, 1873.	5,000 00	"		F. A. Riddle.	
3678	188	"	" "	5,000 00	2 years.		"	
3681	190	"	July 31, 1873.	2,374 00	5 months.		H. E. Picket.	
3705	198	197	May 20, 1873.	12,500 00	15 months.		S. J. Walker.	
3709	200	199	" "	12,500 00	"		"	
3713	203	202	June 22, 1873.	10,000 00	1 year.		H. H. Walker.	
3714	205	"	June 22. 1870.	15,000 00	"		"	
3716	207	"	July 21, 1870.	10,000 00	12 months.		"	
3721	210	209	April 16, 1873.	5,500 00	15 months.		E. C. Walker.	
3723	212	"	" "	6,500 00	"		"	
3725	216	General.	May 20, 1873.	12,500 00	"		S. J. Walker.	
3726	217	"	" "	12,500 00	"		"	
3745	228	227	Jan'y 5, 1871.	6,666 66	1 year.		A. C. Badger.	

Table 2.—Collateral Notes.—(Continued.)

Journal Folio.	No. of Deed.	Obligor, &c.	Date of Note.	Amount.	When Due.	Rate of Interest.	Marks.
3249	95	" "	June 20, 1871.	$10,000 00	2 years.	10 after due.	A. J. Walker. — This is a duplicate entry. The original bond was approved by the Gov. Dec. 31st, 1871. Payable to the order of Andrew Langston.
3248	104	" "	May 14, 1869.	50,000 00	12 months.	.....	R. R. Walker.
3248	104	" "	Jan'y 10, 1871.	6,666 66	3 years.	8 per ct.	Receipt.
3248	104	" "	" "	6,666 66	1 year.	"	"
3249	107	" "	June 20, 1871.	10,000 00	18 months.	"	R. R. Walker.
3249	107	" "	" "	10,000 00	18 months.	"	"
3249	108	" "	Feb. 15, 1871.	3,750 00	3 years.	"	Riddle.
3249	108	" "	" "	3,750 00	3 years.	"	" $22 00 paid.
3249	111	" "	" "	3,750 00	3 years.	"	"
3249	111	" "	" "	3,750 00	3 years.	"	"
3249	112	" "	" "	3,750 00	3 years.	"	Receipt.
3247	120	" "	Jan'y 1, 1872.	6,666 66	1 years.	"	"
3247	120	" "	June 20, 1872.	166 66	3 years.	"	Lambert Lutes.
3249	122	" "	" "	666 66	"	"	Carl Wadewee.
3249	122	" "	Feb. 6, 1872.	666 66			
3249	122	" "	" "	20,000 00			Chicago, Danville & Vincennes R. R. Co. Bonds, $1,000 each.
3249	122	" "	" "				
3249	122	" "	Sept. 18, 1872.	10,000 00			Check S. J. Walker and A. C. & O. R. Co.
3249	122	" "	" "				P. Bodger.
3249	124	" "	Sept. 18, 1872.	6,500 00			Tr'sc'pt of Judgment. Exhibit 152.
3249	124	" "	" "				Note J. D. Hughes.
3249	124	" "	Sept. 18, 1872.	6,500 00			Tr'sc'pt of Judgment. Exhibit 152.
3249	124	" "	" "				Chicago D. & V. R. R. Co.
3249	124	" "	July 11, 1872.	6,583 00	Due Oct. 1.		
3249	124	" "	July 22, 1872.	7,500 00	90 days.		
3249	124	" "	Aug. 21, 1872.	6,875 00	75 days.		
3249	124	" "	Sept. 9, 1872.	7,500 00	63 days.		
3249	124	" "	" "	7,500 00	60 days.		
3249	124	" "	" "				
3249	124	" "	" "				
3249	124	" "	" "	

Table 3.—Trust Deeds Securing Collateral Notes.

Record Page.	No. Ex	Secures Ex.	Date.	Grantor.	Trustee.	Filed for Rec'd.	PROPERTY CONVEYED.
3143	7	5, 6	Dec, 29, 1871,	S. J. Walker and wife	Rogers	Jan. 5, 1872,	Lots 21 to 36, inclusive, Block 10, and Lots 19 to 28, inclusive, Block 13, Walker's Dock Addition.
3154	9	8	June 24, 1872,	"	"	June 28, 1872,	Lots 11 to 18, inclusive, Block 12, S. J. Walker's Dock Addition.
3166	11	10	Nov. 2, 1870,	"	Moore	Nov. 15, 1870,	Block 27, Walker's Sub. N. W. ¼, lying South of canal Sec. 31, 39, 41.
3178	13	12	June 22, 1870,	"	Hoffman	June 27, 1870,	Block 28, Sub. South of canal of N. W. ¼, 31, 83, 14.
3189	15	14, 44, 46, 47, 49, 51, 52, 70, 72, 78, 79, 80, 82,	Jan'y 2, 1873,	"	Rosenthal	Jan. 18, 1873,	800 feet lying bet. river and canal, in Sec. 30, 39, 13.
3237	25	24	Aug. 18, 1870,	H. H. Walker	Rogers	Aug. 26, 1870,	Lots 1 and 2, Block D, Wright's Addition to Chicago.
3248	27	26	May 15, 1871,	Riddle	"	May 16, 1871,	Lot 20. Re-sub of Block 17, S. F. Smith's Sub. N. E. ¼ of N. E. ¼ 18, 39, 14.
3259	30	28, 29	Dec, 13, 1873,	Hansbrough	"		E. ½ N. W. ¼ Sec. 4, 38, 14.
3275	32	31	Aug. 29, 1871,	S. J Walker and wife	"	Sept. 8, 1871,	Lots 9, 10, 11, 12, Block 1, Sutton's Addition.
3287	34	33	"	"	"	Sept. 8, 1871,	Lots 5, 6, 7, 8, Block 6, Sutton's Addition. Lots 5 and 6 released.
3299	36	35	Sept. 29, 1869,	H. H. Walker	Hoffman	Oct. 19, 1869,	Lots 31 to 39, inclusive, Walsh & McMullen's Sub., Block 27, S. E. ¼ 20, 39, 14. Lot 35 released Oct. 8, 1872. Lot 36 released May 3, 1870. 33, 37, 38, 39, released April 19, 1872.
3466	84	83	April 10, 1871,	"	Rogers.	May 19, 1871,	Lot 14, Re-sub., Blocks 10 and 15; S. F. Smith's Sub., N. E. of N. E. ¼ 18, 39, 14.
3475	86	85	Sept. 26, 1870,	S. J. Walker and wife	Hoffman	Sept. 29, 1870,	Block 15, Packer's Addition.
3484	88	87	Jan'y 5, 1871,	Badger and wife	Rogers	Jan'y 7, 1871,	W. ½ Block 32, Sub. E. ½ 31, 39, 14.
3494	91	90	June 19, 1869,	Hansbrough	Hoffman	June 24, 1869,	83 feet on Reuben S., 50 feet N. of Madison.
3504	93	92	"	"	"	June 24, 1869,	50 feet cor. Reuben and Madison sts.
3516	96	95	Dec. 29, 1871,	S. J. Walker and wife	Rogers	Jan'y 5, 1872,	Lots 33 to 37, inclusive, Block 13, Walker's Dock Addition. Certified copy of trust deed also secures another $20,000 note falling due 15 months.
3531	99	98	June 20, 1871,	"	Rice.	July 1, 1872,	N. ½ Block 8, Laughton's Sub. Duplicate of original destroyed by fire.
3542	102	101	May 14, 1868,	H. H. Walker	Hen. Walker	July 9, 1868,	Lots 1 to 6, inclusive; 48 to 94, inclusive; Block 33; Lots 76 to 100, inclusive, Block 34; Lots 48 to 52, inclusive; 59 to 76, inclusive; 87 to 94, inclusive; Block 48, in Sub. of Blocks 33, 34, 47 and part of 48; 19, 39, 14.
3543	104	103	Jan'y 19, 1871,	Badger	Rogers	Jan'y 21, 1871,	W. ½ Block 33, &c.
3549	105	105	"	"	"	"	E. ½ Block 33, &c.
3550	106A						Decree in Superior Court foreclosing last two exhibits.
3562	109	107 and 108	Aug. 16, 1871,	S. J. Walker and wife	Rogers.	Aug. 21, 1871,	1 to 4, inclusive; 17 to 25, inclusive; 27 to 32, inclusive, Block 6, Sutton's Addition.
3564	113	110, 111, 112	Feb. 15, 1871,	Riddle	"	July 10, 1873,	Part of Block 7, Assessor's division, E. ½ S. E. ¼, 18, 39, 14.
3567	229	228	Jan'y 5, 1871,	Badger	"	Jan'y 7, 1871,	E. ½ Block 32, &c.
	123	122	Oct. 22, 1872,	L. Lues.	F. A. Hoffman		Lot 32, Block 5, Dock Add.
3569	131	130	Feb. 4, 1873,	C. Wandersee	"		
3656	165	164	Mar. 24, 1873,	J. Donnermuth	"		Lot 1, Block 7, Laughton.
3657	167	166	Jan'y 16, 1868,	H. H. Walker	H. Waller		30 acres, Sec. 6, 39, 14.
3658	168						Decree foreclosure. Exhibit 167.
3669	169						Master's Certificate Sale.
3673	178	177	Oct. 24, 1872,	F. Boehm	F. A. Hoffman		Lots 20, 21, Block 1, Dock Add.
3675	184	183	June 1, 1871,	M. C. Baldwin	J. G. Rogers		Lots 1, 2, Block 7, Dock Add.
3677	186	185	Nov. 29, 1869,	G. Walsh	"		Lot 9, Block 20, Smith's Add.
3679	189	187 and 188	May 27, 1873,	J. C. Riddle	"		Lot 5, Ellis' Sub.
		198					
3709	201	200	May 20, 1873,	S. J. Walker			Blocks 84 and 85, and N. ½ 91, 92, Canalport.
		216			"		
		217					
3713	204	203	June 22, 1870,	"	F. A. Hoffman		Block 30.
3714	206	205	"	"	"		Block 19.
3717	208	207	July 21, 1870,	"	"		Lots Steele & Buchanan Sub.
3722	211	210	April 16, 1873,	E. C. Walker	J. G. Rogers		Lots 25 to 28, Block 1, Sutton's.
3724	213	212	"	"	"		Lots 20 to 32, Block 1, Sutton's.
3746	229	228	Jan'y 5, 1871,	A. C. Badger			E. ½ Block 32.

Table 3.—Trust Deeds Securing Collateral Note

Page	No.	Security Ex.	Date.	Grantor.	Trustee.	Filed for Record.
3146	7	S. 4	Dec. 26, 1871.	S. J. Walker and wife	Rogers	Jan. 3, 1872.
				"	"	June 24, 1872.
3154	9	3	June 22, 1872.	"	"	
3160	11	10	Nov. 2, 1870.	"	Moore	Nov. 15, 1870.
				"	Hoffman	June 27, 1870.
3170	13	12	June 22, 1870.	"	"	
3180	14	14, 15, 16, 17	July 2, 1870.	"	Rosenthal	Jan. 18, 1870.
		69, 71, 73, 76, 77, 78, 79, 80, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121,

Motion for reference. The assignee moved that it be referred to a Master to take and state an account of what is equitably due upon the principal notes exhibits numbers 197 and 199, being two notes made by S. J. Walker, to said Bank, each for $6,000 and by it assigned to H. A. Kohn & Brothers, introduced in evidence before the Master, Butler, with instructions to include in the taking of such account matters touching said notes which occurred before as well as after the said notes came into the hands of said Kohns from said bank, to which reference with such instructions their counsel objected, but offered to refer it to the Master to ascertain what is due on said notes, as between said Kohn and said Walker after the notes came into the hands of said Kohns and such reference was declined by said assignee as thereby his defenses to said notes would be excluded: the said assignee then and there duly accepted to the rulings of the court, which notes are as follows:

Note. Bank No. 2065. July 19, 1873, for $6,000 at 60 days (no grace), by S. J. Walker, at the office, to the order of International Bank of Chicago, if not paid within three days, interest at 24 per cent.; deposit of one $12,500 note, dated May 20, 1873, at fifteen months, made by Walker to his own order, indorsed by him, secured by trust deed to J. G. Rogers, and gives power to sell collaterals. It is followed by a power to confess judgment, and endorsed by bank without recourse.

Note. Bank No. 2986. Same date and amount at same time, by S. J. Walker, to International Bank, recites deposit of a note for $11,500, made by Walker to his own order, same date and time, and secured by trust deed to Rogers, followed by power of attorney to confess judgment, and indorsed by the bank without recourse.

Admission, That on the 19 September, 1878, said International Bank and said Kohns caused John G. Rogers the trustee in said trust deed, Exhibit 201, to thereunder advertise said blocks 84 and 85, and the north half of blocks 91 and 92, in Canalport, the lands therein described, and sell the same to said Henry A. Kohn for $14,786.50 net, who thereupon made a deed as such trustee to said Kohn, reciting such sale to him under said trust deed for said sum of $14,786.50 and conveying the same to said Kohn. That no money was paid on said sale, it being made for the use of the parties holding the security, that is—to the bank one-half and to the Kohns one-half. That the writ of error

upon the decree in this cause was sued out of the Appellate Court on the 18th June, 1878.

Offer to amend pleadings. Assignee tenders amendments to his pleadings setting up these facts, and asks leave to file the same, which are as follows:

Amendments Proposed.

1st Amendment—On page 12, after the words "appear to be due" (in Sup. bill), insert as follows, viz:

And your orator further shows on information and belief that the said bank and the said Kohns on or about the ..... day of August, 1878, and after the writ of error was sued out of said Appellate Court, as herein stated and served upon them or they had notice thereof, applied to the said Rogers to proceed and sell said lands, viz: Blocks 84 and 85, and the north half of blocks 91 and 92, in Canalport, under the powers conferred upon him and contained in the said trust deed (Exhibit 201 before Master Butler), dated May 20, 1873, and set out in the pleadings in this cause, claiming to be the owners—holders of the four notes of $12,500 each, set out therein and in the pleadings in this cause and Exhibits Nos. 198, 200, 216 and 217, before Butler, Master. That in pursuance of such request said Rogers caused advertisement to be made, and on the 19th day of September, A. D, 1878, sold said lands as such trustee under said deed to said Henry A. Kohn on his bid of $15,000, and thereupon made a deed to said Kohn on or about that date, recorded October 4, 1878, reciting such deed to him, Rogers, and sale to said Kohn thereunder, and conveying said premises to him by virtue thereof. That no money was paid at the said sale, but the said bid was made in the interest of and for the said bank and the said Kohn Brothers: and said deed, taken for their use and benefit solely, they respectively claiming each one-half, that is—the bank one undivided half and the said Kohn Brothers the other undivided half of said lands under said sale and deed.

And your orator claims and insists that such sale and deed did not change the character of the interest or estate of said Bank and Kohn Brothers in said land, but they held it thereafter as they did before—simply and only as security for what, if anything, on taking an account upon just and equitable principles may be found due them respectively from said Walker, to which accounting he is willing and hereby offers to submit.

2d Amendment—In prayer for relief insert as follows, viz:

That your orator be let in to redeem said blocks 84 and 85, and the north half of said block 91 and 92, in Canalport, in all respects, the same as though said sale and deed thereof by said Rogers, trustee, to said Henry A. Kohn had not been made; and that said Kohn be declared to have received and to now hold the said lands as a purchaser *pendente lite*, and with notice of all equities, your orator hereby offering to do equity in the premises as the Honorable Court shall direct.

(Signed) W. T. BURGESS,
Solicitor.

It is stipulated that the above amendments may be filed as of February 16, 1884, and answers and replication now filed to stand to that bill so amended.

(Signed) W. T. BURGESS,
Solicitor.

Which was objected to by Rosenthal & Pence, denied by the Court, and assignee excepted.

Motion to set aside this sale by Rogers to Kohn under trust deed, Ex. 201, thereupon made by assignee, denied by Court and exception taken.

Offer by Kohn and International Bank. That said H. A. Kohn & Brothers, notwithstanding said foreclosure, are now willing and offer for the purposes of this trial to permit said assignee to redeem said security, by payment of the amount due upon said principal notes (exhibits 197 and 199) after allowing all usurious or other payments, if any made to them upon said notes, after the same were sold and delivered to them by said bank, and said bank agrees and is willing that said assignee should redeem from said sale by payment of the amount found due it by the court, as provided in the decree herein, or at the option of said assignee, to pay the amount realized by it upon said foreclosure, viz: $7,393.25, with interest from September 19, 1878. (But they do not intend to admit that they are not now the owners of said property by reason of said foreclosure and sale.)

But said assignee insists that he has the right to have said sale by Rogers, the trustee, set aside, or the said lands sold as though it had never taken place, to pay the amounts to be ascertained by the court justly due the said bank and the Kohns, including matters both before and after they,

the Kohns, received them, on the principal notes for which they received and as he claims hold the said collateral notes, exhibits 198, 200, 216 and 217, and said trust deed 201 as security, which the court denied, and he then and there excepted.

Motion for account by International Bank. Whereupon counsel for the bank moved for an account in said cause; and that the court should take as a basis in ascertaining the amount due to it, the bank, the amount found due by the decree in said case of Wilshire v. International Bank, numbered 18556, being the sum of $172,474 on January 15, 1878, with interest thereon at the regular rate; and that the said bank should be charged with all sums collected or realized since January 15, 1873, from the collaterals in its hands so pledged to it by Samuel J. Walker, and that interest thereon should be computed in the usual way, where partial payments are made.

Limitation. Assignee sets up Sec. 5057, R. S. of U. S., in bar of judgment, and insisted that the said decree as a cause of action against him as such assignee in bankruptcy was thereby barred. Overruled by court, and exception.

Said assignee further insisted that as said decree covered and included the claims and demands of said bank against said S. J. Walker, and the same were merged therein, and the said decree was now extinguished by lapse of time as against him; that the claims and demands so covered, included and merged were also extinguished and no longer existed; and that in the account to be taken in this cause he was entitled to the proceeds of the collaterals when disposed of, or the collaterals themselves, when not disposed of; and thereupon moved that the said ba k be so charged in taking said account. Which motion the court denied and assignee excepted.

And in order to state the account in this cause upon the findings and rulings of the court herein (the said assignee not intending to waive any objection or exception by him taken).

The International Bank puts in evidence certain stipulations as follows:

Stipulation in 12962.

Stipulation in Bauer suit of January 12, 1882.

Title of cause. It is stipulated and agreed by and between Robert E. Jenkins, as assignee in bankruptcy of Samuel J. Walker, of the first part, and Bauer, International Bank, Schoelkopf, Miller, Liebenstein, Loewenthal,

Loebnitz, Kohn & Brothers, Koch and Austrian of the second part, in manner following, that is to say:

Said Robert E. Jenkins, the assignee in bankruptcy of Samuel J. Walker, a bankrupt, has surrendered whatever right, title or claim he has or might have in and to the following securities, in full satisfaction of any right, title or claim said second parties, or either of them, might have to the following principal notes, that is to say:

(1.) No. 1018 B, for $4,000.00, Ex. 16, by surrender of his claims to the collaterals accompanying the same, to-wit, those exhibits in said cause numbered 24 and 25.

(2.) No. 1736 for $4,000.00, Ex. 17, by surrender of his claims to the collaterals accompanying the same, viz: those exhibits in said cause numbered 26 and 27.

(3.) No. 2696 for $6,000.00, Ex. 19, by surrender of his claims to the collaterals accompanying the same viz: those exhibits in said cause numbered 31, 32, 33 and 34.

(4.) No. 2697 for $6,000.00, Ex. 20, by surrender of his claim to the collaterals accompanying same, viz.: those exhibits in said cause numbered 31, 32, 33 and 34.

(5.) No. 865 C, for $5,000.00, Ex. 21, by surrender of his claim to the collaterals accompanying same, viz: those exhibits in said cause numbered 35 and 36.

(6.) No. 271 for $4,000.00, Ex. 40, by surrender of his claims to the the collaterals accompanying the same, being said numbers above 24 and 25.

It is stipulated and agreed by and between the parties hereto, that such surrender shall be deemed and taken as if enforced cash payments of the face amount of said notes had been made of each of them by Samuel J. Walker, of the dates respectively, as follows:

One (1) of the 14th day of Oct., 1873; two (2) of the 14th day of Oct. 1873; three (3) of 11th Nov. 1873; 4 of 11th Nov. 1873; 5 of 29th Sept. 1873; 6 of 11th Oct. 1873.

And that in the taking of the account of the business dealings and transactions of and between S. J. Walker and the International Bank of Chicago in any suit or suits, the said face amounts shall be allowed and charged as of those dates respectively, if otherwise proper to be allowed and charged, neither party intending hereby to concede any matter other than that by the surrender of the claim to the securities the said notes are paid as above provided for.

And it is further agreed between the parties that said International Bank, Miller, Liebenstein and Loebnitz shall and do accept in satisfaction of said principal notes, above

herein set forth from said Jenkins, as assignee, etc., the surrender of all his interest in said securities, and said Jenkins as such assignee, agrees to and does hereby assign all claim, title or interest in or to the same to them respectively, and waives and surrenders any right to said securities under any and all circumstances, and will, when requested, apply to the District Court of the United States for the proper authority to make this agreement, and to make any further instruments, if any may be necessary to complete such assignment, and for ratification thereof, and to vest in them the absolute title to said securities.

It is dated Jan. 12, 1882, signed by the assignee, by the bank under its seal, and the other parties by Rosenthal & Pence, their solicitors.

Stipulation of the 19th December, 1883, in the Bauer suit.

Title of cause. It is hereby stipulated and agreed by and between said Jenkins, as assignee in bankruptcy of Samuel J. Walker, party of the first part, and Augustus Bauer, the International Bank of Chicago, Schoelkopf, Miller, Liebenstein, Lowenthal, Kohn Brothers, Koch and Austrian, parties of the second part, in manner following, viz.:

That said Robert E. Jenkins, assignee, etc., has surrendered, and does hereby, sell, assign, transfer and surrender, unto said Augustus Bauer, whatever right, title, claim or demand he has or might have to the following note, trust deed and land therein described, and money received thereon and by virtue thereof, viz.:

Describes a trust deed dated Nov. 2, 1870, made by S. J. Walker and wife to S. M. Moore, to secure the payment of a note therein described, of same date, made by S. J. & H. H. Walker to order of S. J. Walker, by him indorsed for $10,000, and known in this suit as exhibits 10 and 11, and trust deed conveys block, sec. 31, 39, 14.

In consideration thereof it is agreed and stipulated between the parties that such transfer and surrender is to be in full satisfaction of two certain principal notes known in this suit as exhibits 2 and 3, one principal note numbered 1225, exhibit 2, for $5,000, dated Nov. 7, 1870, made by said S. J. Walker to said bank, payable 90 days after date, and by said bank sold to said Bauer, and another principal note, numbered 2422, exhibit 3, for $5,000, dated Nov. 22, 1872, made by said S. J. Walker to said bank, payable Feb. 17, 1883, and by it sold and indorsed to said Bauer.

And such surrender and transfer are to be taken and treated as enforced involuntary payments of $10,412.50, on June 1, 1878, and of $5,771 of June 24, 1878, by means whereof the amount due upon said principal notes, exhibits 2 and 3, is deemed and declared to have been paid as enforced involuntary payments as of the dates last aforesaid.

This arrangement and stipulation is not to interfere in any manner with the taking of the accounts between said Walker and said bank in this or any other suit or occasion if such accounting should be had, except that said principal notes then drop out of the accounts as then paid; but otherwise the taking such accounting to be had, is to be entirely unaffected by this arrangement, neither party intending hereby to concede any matter to the other, other than that by the surrender of the claims of said assignee to said money and securities the said principal notes are paid as above provided for.

And further this stipulation shall operate and is hereby made to be a transfer and assignment to said Bauer of all the interest of said assignee as such in and to the securities herein above described, and to the money above paid, so that the said Jenkins shall not hereafter, as such assignee, have ar claim any right or title to the same, or any part thereof, and said Bauer shall have the absolute right to said money and full power and authority to enforce the said securities as absolute owner thereof, so far forth as said Jenkins, as such assignee, can assign the same. And, if necessary, said Jenkins, as such assignee, shall, at the request of said Bauer, apply to the proper court for an order confirming this arrangement.

Dated Dec. 19, 1883, and signed by Jenkins, assignee, the bank under its seal, and the others by Rosenthal & Pence, their solicitors.

Stipulations of 8th Dec., 1883, in this cause, No. 15157.

Title of cause. It is hereby stipulated and agreed between Robert E. Jenkins as assignee in bankruptcy of Samuel J. Walker, of the first part, and the International Bank of Chicago, of the second part, as follows:

The said first party hereby transfers and surrenders to said second party whatever right, title or claim he has or might have in and to the securities hereinafter set out, or the proceeds or money collected on account thereof and the property described therein under any and all circumstances.

First. The two notes made by H. H. Walker, dated

August 16, 1871, for $13,500 each, and trust deed accompanying same on land in Block 6, Sutton's addition, notes being exhibits 107 and 108, and trust deed exhibit 109 in this cause.

Second. Three notes made by Francis A. Riddle, dated February 15, 1871, each for $5,200, and the trust deed securing the same, convey part of Block 7, Assessors division of E. ½ of S. E. ¼, S. 18, T. 39, N. 17, 16 E., said notice being exhibits 110, 111 and 112, and the trust deed exhibited 113 in this cause. Net proceeds of sale of part of said premises, made by the trustee under the trust deed February 11, 1882, amounted to $4,929 and $519.25 collected on the Baldwin securities (below).

Third. A note made by Mary C. and Silas D. Baldwin, dated June 1, 1871, for $2,000, and the trust deed securing the same, to J. G. Rogers, being exhibits 183 and 184 in this cause.

In consideration of the transfer and surrender of the said securities, the property described therein, and of the moneys collected upon or by reason of such securities herein above set out, it is agreed and stipulated that the same is to be in full satisfaction of the two principal notes of Samuel J. Walker for $5,000, each numbered respectively 2740 and 2741, and being exhibits 58 and 59 in this cause, and said securities, property and money are taken as an enforced involuntary payment by said Walker or his assignee of $6,000 as of June 25, 1878, and of the sum of $510.28 as of January 7, 1881, and of the sum of $4,929 as of February 11, 1882, upon said two principal notes, which is the amount agreed upon as the value of said collateral securities, property and money.

This arrangement and stipulation is not to interfere with the taking of such accounts between said Walker and the said bank in this or any other cause or occasion (if the taking of such accounts shall be allowed) except that said bank is to be charged as of the dates aforesaid, with the amounts aforesaid as an involuntary enforced payment by said Walker or his assignee, of principal notes; and the said principal notes shall drop out of the account as paid, otherwise the taking of the said accounts to be ultimately unaffected by this arrangement, neither party intending hereby to concede any matter to the others, other than that by the surrender of the claims of said assignee to said money and securities, the said principal notes above described are paid as above provided for.

The assignee agrees to waive all defenses to the securities surrendered, and authorizes said second party to foreclose them as absolute owner, and to obtain, if necessary, from the proper court an order confirming the arrangement.

Dated December, 8, 1883, signed by the assignee, and the bank by its president under corporate seal.

It is admitted that in the pursuance of those stipulations orders were made by the court dismissing bills as therein agreed upon, as to the particular properties therein described.

To which stipulations the assignee objected, because upon their face they were not to be used unless the account was to be taken upon the original indebtedness between the parties, and they are not applicable to an account taken upon said decree in No. 18550, Wilshire v. International Bank et al. as conclusive upon the parties, and the court overruled his objections and assignee excepted.

And thereupon the assignee read in evidence the reports of sale and distribution in following cases.

Report of sale in Bauer case No. 12962.

Title of cause. Recites that in pursuance of decree of April 25, 1878, having duly advertised as thereby required, he did on the 24th June, 1878, sell to Jacob Rosenberg Lots 21 to 36, Block 10, Walker's Dock addition for $54,500.

To the same person Lots 11 to 18 in Block 12, Walker's Dock addition for $16,000.

To Jacob Liebenstein Lots 1 and 2, Block D, Wright's addition for $10,000.

To Leopold Miller & Jacob Liebenstein, Lot 20 in H. H. Walker re-subdivision of Block 17, etc., for $5,150.

To Jacob Rosenberg, Lots 9, 10, 11 and 12 in Block 1, Sutton's addition for $8,000.

To Jacob Rosenberg, Lots 7 and 8, Block 6, Sutton's addition for $3,750.

To Augustus Bauer, Lots 31, 32 and 34, in Walsh & McMullins subdivision for $2,000.

To Jacob Rosenberg part of Block 27, Sec. 31, 39, 14, for $5,770.

To Jacob Rosenberg strip 800 feet wide on Canal and River in 30, 39, 14, for $65,000. Report is dated June 24, 1878.

Report of distribution under sale in Bauer case.

Proceeds of sale of Ex. 7	$54,500
" " " " " 9	16,000
	70,500
Notes hereby secured	
Ex. 1, A. Bauer	$ 12,909.92
" 22, C. E. Schoelkopf	6,430.15
" 23, "	6,430.15
" 41, International Bank	12,863.72
" 42, " "	21,544.20
" 68, B. Loewenthal	11,355.76
Total	71,533.90
Amount sale pro rata to each	
Ex. 1, Augustus Bauer	12,723.33
" 22, C. E. Schoelkopf	6,337.21
" 23, "	6,337.21
" 41, International Bank	12,677.80
" 42, " "	21,232.82
" 68, B. Loewenthal	11,191.63
	70,500.00
International Bank received as follows, in Bauer case:	
On Ex. 41	12,677.80
" " 40	5,000.00
" " 42	21,232.82
" " 43	5,000.00
" " 45	10,000.00
" " 48	5,000.00
" " 50	5,000.00
" " 52	5,000.00
Surplus Sales of B. K. 27	3,286.26
	72,197.53
Less costs in said cause	214.27
Net amount received in said case	$ 71,983.26
Said bank received In Re. Int. Bank v. Page	11.809.68
" " " " " " " v. Wilshire.	5,890.00
" " " " " " " v. Walker..	36,917.45
" " " " Loewenthal v. Ernest	3,722.53
	130,322.53

Amount due bank under decree:		
Principal.....	172,474.00	
Interest.....	4,599.29	
		177,073.29
Less amount received above.....		130,322.53
Deficiency still due.....		$46,750.76

Statement that the bids of Jacob Rosenberg are for the interest and benefit of the parties entitled to the decree.

Receipt of bank for its pro rata $5,000.65 for Ex. 40.

Receipt of bank for four amounts of $5,000 each for pro rata on Notes, Ex. 43, 48, 50 and 52.

Receipt of bank for $12,677.80 and $21,232.82 its pro rata share for notes 41 and 42 for sale of lands in exhibits 7 and 9.

Receipts for $3,286.26 pro rata share of land described Ex. 11 in Bauer v. Walker.

Report of sale and distribution in Loewenthal v. Ernst et al.

Master reports that under decree of 25 "April, 1878, he had on 24 June, 1878, sold in Block 33 in a subdivision" in S. 19, T. 39 N. R. 14 E. for $23,200.

Reports surplus, after satisfying Loewenthal's claim, paid Bank $3,722.04.

Receipt of bank by its president for said $3,722.04.

Report of sale and distribution in International Bank v. Page et al.

Master reports that under decree of April 25, 1878, he did on 24 June, 1878, sell to Jacob Rosenberg for $12,000 the lots of land in decree described Lot 14 of Walker's resub. of B. 10 and 15, in S. F. Smith's subdivision, and that he had paid bank $11,809.68 and returned its receipt signed by B. Loewenthal, president, etc.

Reports of sale and distribution in International Bank v. Wilshire et al.

Master reports that under decree of February 28, 1878, he had on June 24, 1878, sold to Jacob Rosenberg the W. ½ of Block 32 in E. ½ S. 31, 39, 14, land described in decree for $6,000, and that he had paid the Bank $5,890.10, and returns its receipt for that amount signed by Loewenthal, its president.

Admission. That the decree in Bauer v. Walker, et al. was reversed by Appellate Court. That the sale under that decree of Lots 11 to 18 in Block 12, Walkers Dock addition was made to Jacob Rosenberg for the parties in interest

thereunder, and the certificate of such sale was by him at their request transferred to D. K. Tenney before such reversal, and that all the other property sold under said decree was bought in at the Master's sale for the use of the parties in interest under said decree. *Also.* That in said Bauer suit on the 20th Nov. 1880, a decretal order was made as follows:

"And now on this day comes on to be heard said cause upon the issues made by said Eli Kinney herein, since the final decree entered herein on April 25, 1878, in pursuance of the leave granted him by the Court, and the said Eli Kinney comes by his attorney John P. Ahrens and consents that the decree of April 25, 1878, entered herein may be confirmed and the cross-bill filed by him dismissed. And the Court being now fully advised in the premises upon motion of Rosenthal & Pence, it is ordered, adjudged and decreed by the Court, that the decree of April 25, 1878, entered herein, stand confirmed against said Eli Kinney, and that this cross-bill filed herein be and the same is hereby dismissed."

Also. That on the 27th June, 1881, after said reversal of said decree in said Bauer case, a supplemental cross-bill of complaint was filed in said cause by said assignee to, among other things, set aside the sales made under said decree, including that of Lots 21 to 36 in Block 10, Walker's Dock addition, and to set aside the deed made by Eli Kinney and wife vesting the title through mesne conveyances in Loewenthal, and to have the deed from S. J. Walker and wife to Kinney of said lots declared a mortgage, and the Court upon answers filed by said Int. Bank and others, and the trial of the issues thereby made, entered a decree on the 11th July, 1882, as follows:

Decree on supplemental cross-bill of the assignee in the Bauer suit entered July 11, 1882.

Finds that S. J. Walker being seized in fee of Lots 21 to 34, inclusive in Block 10, Walker's Dock addition, did on 9th January, 1873, for a valuable consideration, sell and convey to Eli Kinney said lots by deed absolute on its face, and recorded January 21, 1873. That said Walker being also seized of Lots 35, 36, and S. ½ of 37, in said block 10, did on January 9, 1874, for a valuable consideration, sell and convey to Eli Kinney said lots by deed absolute on its face, recorded Feb'y 19, 1874. That the assignee claimed that said deeds though absolute in form, were intended as mortgage security, as to which the Court makes

no finding. That Eli Kinney by deed dated Mar. 7, 1878, for a valuable consideration, conveyed the said lots to Charles L. Burgoyne, recorded Nov. 9, 1880. That said Burgoyne by deed dated Mar. 7, 1878, recorded Nov. 9, 1880, conveyed said lots to Martha S. Kinney the wife of Eli Kinney. That Martha S. Kinney with her husband Eli Kinney by deed dated Nov. 16, 1880, recorded Nov. 17, 1880, conveyed said lots to Louis Kuhn. That said Kuhn by deed dated Nov. 16, 1880, recorded Nov. 23, 1880, did convey said lots to said Berthold Loewenthal. That the title so acquired by him was vested in him in trust for himself, and the said bank, Schoelkopf and Bauer. That they purchased and paid a valuable consideration therefor, without any knowledge or notice actual or constructive of any claim on the part of said assignee, or of Walker, of any interest in said premises, and that neither Lowenthal, the bank, Schoelkopf or Bauer, at the time of conveyance to Lowenthal, or at time of payment of consideration by him for said premises to said Kohn, had any notice or knowledge of any right, title, or interest of said assignee, or of said Walker in or to any portion of said premises, and that they are innocent purchasers of the same for value. That the assignee did not commence suit within two years from time when the cause of action accrued to him, and was put upon inquiry of the adverse claim of said Kinney to said premises more than two years prior to the commencement of this suit. That he has been guilty of negligence in bringing this suit, and that he is now barred of any suit or action against the defendants to said original bill or any of them, under and by virtue of the statute of the United States in such case made and provided. That Walker was adjudicated bankrupt and deed issued to his assignee July 31, 1878.

It is therefore ordered, adjudged and decreed that said supplemental cross-bill and the amendments thereto be dismissed for want of equity, except that portion thereof relating to the premises hereinafter described and as to those it be dismissed without prejudice. Those portions being lots 11 to 18, block 12, Walker's Dock addition. The 800 feet strip between River and Canal.

Admitted. That a supplemental cross-bill was afterwards filed by said assignee to set aside the resi lue of the sales made under said decree, which is now pending in this court, except as to those parcels thereof which have been disposed of by the said stipulations above referred to.

Also. That in the Bauer suit the report of distribution shows that said:

Lots 11 to 18, block 12, sold for	$16,000 00
The gross sum of the 6 principal notes	71,533 90
Of which the bank share is stated to be	34,407 92
And therefore its pro rata of $16,000 is	7,693 20
And after deducting costs is	7,657 20

Also. That the bank has received on account of Walker's collaterals as follows:

1878, Sept. 20. From P. Higgins, (No. 4 in bank sale)	$ 470 00
1878, Sept. 21. From W. Kerrigan, (No. 6 in bank sale)	769 50
1879, April 9. In Bank v. Brennock	8,083 75
1879, July 24. From master's sale in this case of J. McQuade and Charles Manske notes	425 00
1881, Jan'y 7. S. and M. C. Baldwin on account Ex. 113, (No. 7 in bank sale)	430 00
1877, April 30. G. Bradford	18 00
1878, June 28. G. Bradford, (No. 16 in bank sale)	235 00
1878, May 7. L. Lues, (No. 5 in bank sale)	60 00
" July 11. " "	50 00
" Nov. 14. " "	140 00
1877, Oct. 23. F. Boehm, (No. 15 in bank sale)	35 00
" Nov. 13. " "	35 00
1878, Jan'y 15. " "	142 80
1879, April 9. " "	519 29
" Sept. 7. " "	200 00
" Sept. 23. " "	100 00
" Dec. 3. " "	190 00
" Dec. 17. " "	200 00
80, Jan'y 17. " "	60 00
18" May 22. " "	150 00
" June 23. " "	100 00
" July 8. " "	200 00
" Aug. 7. " "	100 00
" Sept. 20. " "	100 00
" Oct. 7. " "	79 50

Also. That under the decree in Buchanan v. International Bank and others, (item No, 1. in master's report of sale in this case,) a sale was made by B. D. Magruder, master, etc., Nov. 12, 1878, to Jacob Rosenberg, realizing $8,791.35 net, after deducting expenses and costs of collection.

Also. That the costs of court and attorneys' fees in attempting to collect Exhibits 133 to 152 inclusive, amounted to the sum of $1,002. 13.

All admissions made by the parties herein contained are so made subject to *materiality, competency and relevancy* in the case.

The parties, (the said assignee saving however his exceptions as to the Kohn notes above taken,) waive a reference to the master to state the account, and submit the matter to the Court, and thereupon the assignee not waving his exceptions to the above findings of the Court, tenders as the items to be thereunder in the premises allowed and charged in taking and stating the account herein, the following statement viz:

ASSIGNEE'S STATEMENT OF ACCOUNT.

1878, Jan'y 15. Decree		$172,474 00
1878, June 24. Int. 5 mo. 9 days		4,570 56
		$177,044 56
Received from master's sales.		
On Exhibit 40, Bauer case	$ 5,000 65	
" 41, " "	12,677 80	
" 42, " "	21,232 80	
Sale Block 27, Sec. 31, Bauer case	3,286 26	
" " 33, Sec. 19, Ernst case	3,722 04	
" Exhibits 55, 56 and 57, Page case	11,809 68	
" " 53, Wilshire case	5,890 10	
" securities in Int. Bank suit, except Exhibits 216 and 217, (No. 21)	33,917 45	97,536 80
		$ 79,507 76
1879, April 9. Interest 9 mo. 16 days		3,789 84
		$ 83,297 60
Received from John Brennock		8,080 75
		$ 75,216 85
1884, Feb'y 16. Int. 4 years 10 mo. 7 days		21,900 59
		$ 97,117 44
1879, July 24. Manske and McQuade		425 00
Amount due		$ 96,692 44

Objections by bank to the above statement.

First. As to item 1, Ex. 40, Bauer case, the bank is charged with the sale under that decree, while it should be charged with the amount agreed upon by stipulation of January 12, 1882.

Second. Because the decree of sale in the Bauer case was reversed and the sale thereunder of Lots 19 to 36 inclusive in block 10, was vacated, and the mortgages thereon remain unforeclosed, and it is not to be charged with the proceeds of that sale. The objection relates to items 2 and 3, Exhibit 41 and 42.

Third. As to item 4, sale of block 27, it should not be charged with proceeds of sale under that revised decree, but with the amount as provided in stipulation of December 19, 1883.

Fourth. As to item 8 of that statement it objects as it is not chargeable with the amount of the sales under the revised decree in this cause, but only with the proceeds of such collaterals as have been collected.

Fifth. Because it has enforced the payment of Exhibits 216 and 217, and has charged itself with the amount received in its account rendered, while said assignee excepts those collaterals and does not charge the bank therewith.

Sixth. It objects to the items of interest as charged in that account.

Objections of bank sustained by the court, and the court refused to state the account as proposed by said assignee to which he then and there excepted.

Thereupon Rosenthal & Pence tender as to the items of said account to be taken and stated, the following:

Bank's statement of the account:

STATEMENT OF ACCOUNT OF THE SAID INTERNATIONAL BANK TO FEBRUARY 16, 1884.

1878, Jan. 15—		
To amt. as per decree, Feb. 28, '78 and Apr. 28, '78		$172,474 00
By collection on collateral G. Bradford, Apr. 30, 1877	$ 18 00	
By collection on collateral F. Boehm, Oct. 23, 1877	35 00	
By collection on collateral, F. Boehm, Nov. 13, 1877	70 00	

By collection on collateral, F. Boehm, January 15, 1878		142 80	
By note 2701 Ex. 40 as per stipulation of Jan. 12, 1882, treated as paid Oct. 12, 1873, amt. of note	$4,000 00		
Interest from Oct. 12, 1873, Jan. 15, 1878	1,022 00	5,022 00	5,287 80
			$167,186 20
1878, June 24—			
To interest to date			4,430 43
By L. Lues collection May 7, 1878	$ 60 00		
By net proceeds Master's sales as follows:			
By Bank v. Wilshire, et al. Ex. 88, W½ B. 32, C. T. Subd. E½, 31, 39, 14		5,890 10	
Bank v. Page, et al. Ex. 84, Lot. 14, of 10–15, south, N E ¼ 18, 39, 14		11,809 68	
Bauer v. Walker et. al. Ex. 8, 48 19-100 part of $16,000 lots 11 to 18, blk. 12 Dock add'n	$7,707 20		
Less estimated pro rata of costs, etc	50 00	7,657 20	
By Loewenthal v. Ernst, Ex. 102 surplus of Master sale paid bank under general collateral agreement	3,722 04	29,139 02	
			$142,477 61
1878, June 25—			
To interest one day			23 74
			$142,501 35
By agreed value of Exs. 58 and 59 as per stipulation of Dec. 8, 1880			6,000 00
			$136,501 25
1878, September 19—			
To interest to date			1,911 00
			$138,412 35

By proceeds of sale under T. D. Walker, Ex. 201, B 84 and 85, and N ½ 91 and 92, Canalport	$7,393 25		
By G. Bradford collection June 28, '78.	235 00		
By L. Lues collection July 7, '78	50 00		7,678 25
			$130,734 10
1878, September 20— To interest to date			21 79
			$130,755 89
By proceeds of sale under T. D., P. Higgins, Ex. 120, Lot 19, B. 4, Walker's Dock			470 00
			$130,285 89
1878, September 21— To interest to date			21 71
			$130,307 60
By proceeds of sale under T. D., W. Kerrigan, Ex. 126, Lot 43, B. 5, Walker's Dock			769 50
			$129,538 10
1878, November 12— To interest to date			1,101 07
			$130,639 17
By proceeds of Martin's sale Ex. 103 and 105, E ½ W ½ B. 33, 31, 39, 14	$9,500 00		
Less attorneys' fees and court costs obtaining decree	$ 600 00		
Master's fees and cost of sale	108 65	708 65	8,791 35
			$121,847 82
1879, April 9— To interest to date			2,985 27
			$124,833 09
By proceeds Ex. 85 (Brennock), B. 1 15, Packer's Add'n	$8,583 75		

Less attys' fees and court cost.....	500 00		
		8,083 75	
By L. Lues collection Nov. 14, 1878...		140 00	
By F. Boehm, collection Apr. 9, 1870.		519 29	
			8,743 04
			$116,090 05
1884, Feb'y 16, to interest to date.....			33,801 54
			$149,891 59
1883, Oct. 10, to costs in suit vs. C. D. & V. R. R., on account of 20 bonds, Ex. 133 to 152.....			1,002 13
			$150,893 72
By collections as follows:			
1879, July 24, cash from Butler, Master, proceeds of 170 to 172, John McQuaid notes and T. D....$	200 00		
173 to 175, Charles Manske notes and T. D.....	225 00		
1879, Sep. 7, F. Boehm.....	200 00		
" " 23, do	100 00		
" Dec. 4, do	190 00		
" Dec. 17, do	200 00		
1880, Jan'y 17, do	60 00		
" May 22, do	150 00		
1880, June 23, do	100 00		
" July 8, do	200 00		
" Aug. 7, do	100 00		
" Sep. 20, do	100 00		
" Oct. 7, do	79 50		
1881, Jan'y 7, S. D. Baldwin on acc't Ex. 113, 510, 25, less att'ys fees and costs, $80.25.....	430 00		
1882, Feb'y 14, net proceeds of trustees sale, Ex. 113, see stipulation of Dec. 8, 1883.....	4,929 00		
			7,263 50
			$143,630 22

To which and to each and all of the items thereof the said assignee then and there excepted and files his objections as follows:

Exceptions to bank account.

Exceptions taken by the said assignee to the statement of the account (marked A. A.) presented by said bank to the court in this cause.

The said assignee objects to the items in said account following, viz.:

1st. To the decree for $172,474.00, for the reasons and on the grounds stated in the pleadings and certificate of evidence.

2nd. To the item $5,022 per stipulation, etc.

3rd. To the item $7,657.

4th. To the item $6,000 per stipulation, etc.

These three exceptions are on the grounds specified in the certificate of evidence:

5th. To the item $7,393.25 for the reason that the amount due on the principal notes should be ascertained, and redemption allowed or sale made for the payment thereof the same as though the sale specified in the item had not taken place.

6th. To the item $235 for the reason that this Bradford note was sold to the bank by the Master under the decree of April 25, 1878.

7th. To the item $50 for the reason that this Lues note was sold by the Master to the bank under said decree.

8th. To the item $470 for the reason that this Higgins note was sold by the Master to the bank under said decree.

9th. To item $769.50 for the reason that this Kerrigan note was sold by the Master under the said decree to said bank.

10th. To the items for which balance of $8,791.35 is extended for the reason that this matter was sold under said decree by the Master to the bank.

11th. To the item $140 for the same reason as the 7th exception above.

12th. To the item $519.29 for the reason that this Boehm note was sold under said decree by the Master to the bank.

13th. To the item $1,002.13 for the reasons that these bonds were sold under said decree by the Master to the bank; and in any event the costs and expenses of collecting any particular collateral, if proper, should be charged to that and not upon the fund at large, and if nothing is realized,

then nothing should be charged in the absence of express directions to incur them.

14th. To all of the Boehm items from $200 to $79.50 for the reasons specified in the 12th exception above.

15th. To the item $430 for the reason that this Baldwin note was sold by said Master under said decree to said bank.

16th. To the item $4,929 per stipulation, etc., on the grounds specified in the certificate of evidence.

In each and all of which matters said statement is erroneous, and such items should not enter into the account in the cause, and he moves to exclude the same.

Which are overruled by the court, and the said assignee then and there excepted, and thereupon the court finds the amount to be one hundred and forty-three thousand six hundred and thirty dollars and twenty-two cents, as stated in said account due this day, Feb'y 16, 1884.

Which were all the matters offered or read in evidence by the parties at the hearing of said cause. All of which is duly certified this 16th February, 1884.

M. F. TULEY, [Seal.]
Judge Circuit Court Cook County.

ERRORS ASSIGNED ON THE APPEAL TO THE APPELLATE COURT OF FIRST DISTRICT OF ILLINOIS.

1st. The Circuit Court rendered a decree for the said International Bank and against said assignee, whereas it should have rendered one in favor of said assignee and against said bank, granting him the relief prayed for in his bills, cross and supplemental, filed in said cause.

2nd. The Circuit Court dismissed the cross-bill filed by Samuel J. Walker, the supplemental cross-bill filed by said assignee the 28th June, 1881; the supplemental cross-bill filed by him the 30th day of November, 1883.

3rd. The Circuit Court sustained the exceptions of said International Bank to the answer of said assignee, as amended and filed Jan'y 21, 1884, to the supplemental bill of said bank filed the 26th day of November, 1883.

4th. The Circuit Court overruled the demurrer of said assignee to the supplemental bill of said bank filed the 30th day of November, 1883.

5th. The Circuit Court admitted improper evidence on the part of the appellees, and excluded proper evidence on the part of the appellant on the hearing of the oause.

6th. The Circuit Court admitted the proceedings and decree in the case of Wilshire et al. against the International Bank et al.

7th. The exclusion of proof of the facts, matters and things set forth in that part of his answer, and the amendments thereto, to the supplemental bill of the bank, filed 26th November, 1883, to which exception had been sustained.

8th. The refusal to take and state an account of what was equitably due on the two principal notes, Exhibits 197 and 199 in the cause held by the Kohn Brothers, appellees.

9th. The refusal to allow to be filed the amendments setting up the facts touching the sale of land under Exhibit 201, and praying that the same may be set aside.

10th. The refusal to vacate said sale and set the same aside and have an account taken touching the principal notes for which Exhibits 198, 200, 216 and 217, and trust deed 201, were received and held security.

11th. The holding the decree rendered in the case of Wilshire et al. vs. The International Bank et al. to be binding on the assignee, and the basis upon which to charge him with the amount thereof in the account between the bank and said assignee.

12th. In refusing to hold said decree barred and extinguished by the limitation law of the Bankrupt act of the United States, Section 5057.

13th. In holding that all the claims of the bank were merged in the said decree, and then refusing to hold said decree barred and extinguished by said section of the bankrupt law, and the assignee entitled to the securities or the proceeds thereof, involved in this suit, and an account touching the same.

14th. The admission of the three stipulations of January 12, 1882, December 19, 1883 and December 8, 1883, and basing any charges against said assignee thereon.

15th. In refusing to charge the bank with the following items:

Received on Ex. 40, Bauer sale	$ 5,000 65
" " 41, same case	12,677 80
" " 42, " "	21,232 80
Sale Block 27, Sec. 31, same case	3,286 26
" " 33, " 19, Ernst case	3,722 04
" Exhibits 55, 56, 57, Page case	11,809 68
" " 53, Wilshire case	5,890 10

" Securities in Int. Bank suit (less Exhibits 216, 217, $3.000).....	33,917	45
And interest from the date of that sale June 24, 1878.		
Amount paid by John Brennock April 9, 1879, and interest.....	8,080	75
The Manske and McQuade notes.....	425	00

16th. In stating the account as found, and each and every item thereof.

17th. In overruling the several exceptions taken by the assignee thereto.

18th. In directing the re-sale of the items under this decree, which had been sold under the decree of April 25, 1878, whereas the bank should have been charged with the amount of the sale, under the decree of 1878, in the account.

19th. And in other respects said decree is erroneous, and should be reversed and set aside, and he restored, etc.

W. T. BURGESS,
For Appellant.

ERRORS ASSIGNED IN THE SUPREME COURT OF ILLINOIS:

On the appeal by assignee from the judgment of affirmance in the Appellate Court at its March Term, 1884.

That the Appellate Court of the first district did not sustain the errors assigned upon the decree of the said Circuit Court, each severally considered, and affirmed the said decree, whereas it should have reversed the same.

W. T. BURGESS,
Att'y for Assignee, Appellant.

7-484

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1887.

No 254

ROBERT E. JENKINS, AS ASSIGNEE IN BANKRUPTCY OF SAMUEL J. WALKER,
Plaintiff,
vs.
INTERNATIONAL BANK OF CHICAGO, B. LOEWENTHAL, A. BAUER, HENRY A. KOHN, DAVID A. KOHN, JULIUS A. KOHN, JOSEPH A. KOHN, LEOPOLD MILLER, JACOB LIEBENSTEIN, C. EDWARD SCHOELKOPF, EDWARD KOCH, JOSEPH AUSTRIAN, MARTIN CLAYBURGH, SIMON YONDORFF, AND JOHN G. ROGERS,
Defendants.

In Error to Supreme Court of Illinois.

Plaintiff's Brief.

WILLIAM T. BURGESS,
Attorney for Plaintiff.

CHICAGO:
PRINTED BY THE CHICAGO LEGAL NEWS COMPANY, 87 CLARK STREET
1888.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1887.

ROBERT E. JENKINS, AS ASSIGNEE IN BANKRUPTCY OF SAMUEL J. WALKER,
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vs.

INTERNATIONAL BANK OF CHICAGO, B. LOEWENTHAL, A. BAUER, HENRY A. KOHN, DAVID A. KOHN, JULIUS A. KOHN, JOSEPH A. KOHN, LEOPOLD MILLER, JACOB LIEBENSTEIN, C. EDWARD SCHOELKOPF, EDWARD KOCH, JOSEPH AUSTRIAN, MARTIN CLAYBURGH, SIMON YONDORFF AND JOHN G. ROGERS,
Defendants.

In Error to Supreme Court of Illinois.

STATEMENT.

This case was before the Supreme Court of Illinois at the March term, 1881, when it was reversed and remanded, and is reported in 97 Ill. 568. It was reinstated in the Circuit Court on that remand, June 27, 1881. It was heard in that court, a decree rendered in favor of the defendants in error, and that decree was affirmed in the Supreme Court of Illinois, 17th Nov. 1884, reported in 111 Ill. 462, and from that affirmance the plaintiff has brought the case before this court on error.

This suit was commenced by bill in chancery, filed in the Circuit Court of Cook County, Illinois, on the 17th February, 1875, general docket number, 15,175, by the International Bank of Chicago, Illinois, against Samuel J. Walker, the

principal defendant, debtor and pledgor of the securities involved, and other persons, assignees of some of Walker's principal notes and the securities pledged with them to that bank.

The bill, AGREED RECORD, 17 to 21, sets out, giving copies of them, twenty-two principal notes (numbering them 1, 2, 3, &c., up to 22), made by S. J. Walker, and two notes made by Kinney, which he had guaranteed to them, A. R. 22 and 23; sets out the three so-called "blanket agreements," made by Walker with it, of July 7, 1869, Dec. 30, 1871, and July 9, 1873, pledging collaterals then or thereafter held by it as security for any debt Walker might then or thereafter owe it. It then sets out (A. R. 23 to 29) certain collaterals which were specially pledged for particular notes, and (A. R. 29 to 30) certain others held under the "blanket agreements" as general collaterals; but does not among these collaterals allude to or mention the principal note and its collateral, in question in the so-called Wilshire suit. It then sets out (A. R. 31) payments made on some of the principal notes; and (A. R. 31) that interest had been paid on the said principal notes as follows: 1, up to October 1, 1873; 2, to October 28, 1873; 3, to October 12, 1873; 4, 5 and 6, to October 17, 1873; 7, 8, 9 and 10, to October 26, 1873; 11, to October 22, 1873; 12, to October 21, 1873; 13 and 14, to November 14, 1873; 15 and 19, to November 11, 1873; 18, to October 19, 1873; 20, to November 17, 1873; 21, to March 21, 1874, and 22, to March 30, 1874 (at which dates the Statute of Limitations began to run on them respectively). It also sets forth ten other principal notes made by S. J. Walker to it, and by it assigned, and the persons to whom assigned, who, with Walker, are made defendants to the bill, and are among the defendants here as interested in the disposition of the collaterals. The residue of the bill is the ordinary bill of foreclosure, asking for an account of what is due and sale of the collaterals and distribution of the proceeds.

Walker on the 29th April, 1875 (A. R. 35) filed his answer and a cross-bill; (A. R. 38) simply a duplicate of his answer setting up various defenses, and among others, usury in the dealings between the bank and him, Walker, out of which all the principal notes in question grew, but waiving forfeitures and submitting to an account to be taken on equitable principles as to amount due on them.

The other defendants filed their answers, and Austrian,

Bauer, the Kohns, Loewenthal and Koch a cross-bill, March 11, 1875. (A. R. 34.)

As stated above the case under the original bill and cross-bill involved the taking of an account touching the business dealings and transactions between Samuel J. Walker, the bankrupt, and the International Bank of Chicago, in the course of which he gave it notes and pledged to it to secure them collaterals, and to foreclose these pledges this suit was commenced before Walker went into bankruptcy.

Walker's affairs with that bank were of themselves sufficiently complicated, but to make "confusion worse confounded" the bank saw fit to commence, about the time this suit was commenced, three other suits, and to file cross-bills in five other suits, all upon the same identical causes of action and commonly called the "International Bank v. Walker cases."

Those various suits in which the bank was complainant in order of dates, are as follows:

This, the case before this court is General Docket No. 15157 in which the bill was filed February 17, 1875. (Ag. Rec. 17.)

No. 15550, International Bank v. John Brennock et al. Bill filed 19th March, 1875. (A. R. 96.)

No. 15575, International Bank v. William Wilshire et al. Bill filed the 22d day of March, 1875. (A. R. 107.)

No. 15979, International Bank v. Benjamin Page et al. Bill filed the 26th day of April, 1875. (A. R. 106.)

Those suits in which the International Bank was a cross-complainant, are

No. 12962, Augustus Bauer v. Samuel J. Walker et al. Cross-bill filed in it by the bank April 12, 1876. (A. R. 103.)

No. 18556, Wilshire et al. v. International Bank. Original bill filed in Superior Court, March 11, 1874. (A. R. 132.) Transferred to Circuit Court, Dec. 8, 1875. Cross-bill filed by bank, April 12, 1876. (A. R. 135, *The "Wilshire Suit."*)

No. 15549, Berthold Loewenthal v. William Ernst et al. Cross-bill by bank filed April 12, 1876. (A. R. 104.)

No. 15815, Berthold Loewenthal v. Milford D. Buchanan et al. Cross-bill by bank filed April 12, 1876. (A. R. 108.)

No. 15979, Fleishman v. Samuel J. Walker et al. the time of filing the original and cross-bills in which do notappear in this record.

So that we have nine cases in which, as between S. J.

Walker, for he was a party defendant in all of these suits to the bills or cross-bills of the bank, and the International Bank, a complainant in bills or cross-bills in all of them, it will be found on examination of the records in them that precisely the same questions were involved, touching the same identical notes given in the course and springing out of the moneyed dealings between them, and where the principal question in each and all of them was, did S. J. Walker, by reason of those moneyed dealings, owe the bank anything, and if so, how much, usury in these dealings being the defense set up in all of them.

The contents of the various bills and cross-bills filed by the bank against Walker in cases other than the one at bar, are substantially set out in the record. (A. R. 82 to 96 and 103 to 120.)

The causes being at issue, in November, 1875, (though not filed until May 14, 1877,) a stipulation to take testimony in these so-called "Walker cases," except in the "Wilshire" case, was made. It is set out (A. R. 89) as follows:

"16,176, Norman Williams et al. v. F. A. Hoffman.

15,197, Augustus Bauer v. Samuel J. Walker et al.

12,962, The International Bank v. Samuel J. Walker et al.

15,549, Berthold Loewenthal v. William Ernst et al.

15,642, Berthold Loewenthal v. Cyrus H. McCormick et al.

15,551, Isaac Fleishman v. Samuel J. Walker et al.

15,979, The International Bank v. Benjamin v. Page et al.

15,550, The International Bank v. John Brennock et al.

15,575, The International Bank v. William Wilshire et al.

15,815, Berthold Loewenthal v. Milford D. Buchanan et al. In Chancery.

"It is hereby stipulated by the parties to the above entitled cases that the evidence taken in either of the above entitled cases, may be read and considered as evidence in any other of said cases so far as the same is applicable and not subject to legal objection, and that all legal objections, except as to matters of form, to such testimony may be interposed at any time hereafter before the final decree; and further, *that all said cases may be considered and heard together, not however intending to consolidate the same.* And further that *the master shall make but one report of the depositions taken,* and make in each case a separate report as to his findings in that case."

It is signed by the solicitors in the cases stated in it.

In connection with the title of the causes in this stipulation and to account for the omission of the case of Wilshire v. International Bank therefrom, it must be remembered that there were two Wilshire cases, the one alluded to above and the one in which the "Wilshire decree" pleaded by the bank in this case was rendered. That case was commenced in the Superior Court, and the above stipulation was given before it was transferred to the Circuit Court from the Superior Court.

The stipulation, ("Ex. A." A. R. 88,) filed Dec. 2, 1875, under which the "Wilshire case" was transferred from the Superior to Circuit Court as above stated, provides, "that said cause be at once reinstated on the docket and transferred to the Circuit Court of Cook County, and *that the same be referred to W. Butler, Master, etc., and set down for hearing before Judge E. S. Williams, with other cases in which said Walker and the International Bank and others are parties, on the —— day of December, 1875.*"

The testimony in the ten cases mentioned in the above stipulation and in the case of *Wilshire* v. *International Bank and others*, was taken as one case and but one report of the testimony was made, and, to show how completely these eleven cases were made and treated as one case while they were pending in the master's office. I refer to a subpœna *duces tecum* which was served on Loewenthal, the president of the bank, to produce before the master books, papers and vouchers touching S. J. Walker's accounts with it. To this the bank objected, and on the 12th January, 1876, applied to the court for directions. Thereupon the court directed the books, etc., to be produced on Walker's filing a stipulalation waiving the penalties for usury. The same order was entered in all of the cases, each reciting the testimony of Loewenthal under the subpœna, and the objection taken to it before the master. For this order only *one* draft was prepared, (Ex. E., A. R. 91,) and that was indorsed by a stipulation (A. R. 92,) that it should be entered in ten of the cases, the case excluded being that of *Loewenthal* v. *McCormick et al.*, No. 15642, where the defense of usury was not interposed. This last mentioned case is reported 101 Ill. 143.

These eleven cases all come on for hearing at the same time on a report of that testimony, and were all decided July 6, 1877, when the same interlocutory order was entered in ten of them, (those now particularly under discussion,) but one draft for which order was prepared. (Ex. F. A. R. 93.)

The cases then came before the master under one notice, (A. R. 95,) which includes in its caption these cases, namely, *International Bank* v. *Walker* and *Wilshire* v. *International Bank*, and which states that Rosenthal & Pence, as solicitors for International Bank and others, would, on 26th September, 1877, "proceed with the statement of account in said cause and introduce whatever additional testimony we may desire necessary."

On the 2d day of Feb'y, 1878, the master files reports in each case, all dated Jan'y 15, 1878, all containing the same identical notes and the same amounts due in each case, the footings of which are the same sum, $172,472.

The history of these various suits is fully set out in the answer of the assignee, filed Nov. 30, 1883, (A. R. 82 to 96,) and the amendments thereto, filed Jan'y 21, 1884. (A. R. 103 to 120.)

Exceptions were taken to this part of the answer, (A. R. 126,) and were sustained by the court.

The assignee offered to prove them (A. R. 149,) but the appellees objected; the court sustained the objection, so that, for the purposes of the argument, the facts are sufficiently before this court, and, if legitimate to be shown, there was error in sustaining the exceptions to the answer setting up the facts, and the evidence tending to prove them, the 3d and 7th errors assigned. (A. R. 178.)

On the 8th April, 1881, (A. R. 74,) the decree of April 25, 1878, in the case at bar, was reversed and cause remanded; a copy of that order was filed in the Circuit Court June 28, 1881, the cause reinstated, and the assignee, on leave granted, filed a supplemental bill that day. It is set out (A. R. 127). It sets forth the decree, sale to the bank under it of all the collaterals described in the decree except two, prays that the sales to the bank be set aside, and he let in to redeem. Afterward, on January 12, 1884, this bill was dismissed as to all of the items of sale, twenty in number, made to the bank, except the twenty-first, that of the two $12,500 notes, secured in common with the "Kohn notes," by Ex. 201, a trust deed on B. 84 and 85, and N. ½ B. 91 and 92, Canalport.

The cause (A. R. 74) on the remanding order of March, 1881, passing through the Appellate Court April 8, 1881, was, on 27th June, 1881, reinstated, and more than two years afterward, on the 26th November, 1883, the bank, by leave of court, filed a *supplemental bill*. (A. R. 75.)

It sets forth the filing of the original bill in this cause,

17th Feb'y 1875, and its allegations and prayer in a general way, and refers to it for its contents. That Walker filed his answer thereto and a cross-bill to which the bank answered the cause at issue and undisposed of. That on the 25th April, 1878, a decree was rendered, finding the amount due the bank on the indebtedness set out in the bill to have been, on the 15th June, 1878, $172,474, at the date of the master's report filed in the cause.

And by way of supplement. That a writ of error was sued out of the Appellate Court, First District, and such proceedings had that said decree was reversed and cause remanded. That April 26, 1878, S. J. Walker in bankruptcy was adjudicated bankrupt, and on the 31st July, 1878, was appointed his assignee in bankruptcy, and his assets duly transferred to him. That Jenkins, on his application to this court after the said reversal, was allowed to defend and prosecute said cross-bill filed herein by said Walker, and duly instituted in place of said Walker herein. That said cause has not been heard since its reversal.

"That a certain cause was lately pending in said Circuit Court of Cook county, on the chancery side thereof, wherein George Wilshire, Joseph W. Wilshire, William M. Wilshire, Sarah Wilshire, Frances M. Wilshire, Ella Pomeroy and Fannie Pomeroy, were complainants in the original and supplemental bill filed therein, and the said International Bank, John G. Rogers, Samuel S. Walker and David Frey were defendants thereto; and wherein said David Frey was complainant in his cross-bill and supplement filed therein, and said George Wilshire, the International Bank, John G. Rogers, Samuel J. Walker, Frances M. Wilshire, Joseph W. Wilshire, William M. Wilshire, Sarah Wilshire, Ella Pomeroy, Fannie Pomeroy, John H. Young, Alpheus C. Badger and Elvira C. Badger were defendants thereto; and wherein the said International Bank was complainant in its certain cross-bill filed therein, and said George Wilshire, Frances M. Wilshire, Joseph W. Wilshire, William M. Wilshire, Sarah Wilshire, Ella Pomeroy, Fannie Pomeroy, John H. Young, John G. Rogers, Samuel J. Walker and David Frey, were defendants thereto; and wherein the said International Bank was complainant in its certain cross-bill, filed therein, and said George Wilshire, Frances M. Wilshire, Joseph W. Wilshire, William M. Wilshire, Sarah Wilshire, Ella Pomeroy, Fannie Pomeroy, John H. Young, John C. Rogers, Samuel J. Walker and David Frey, were defendants thereto; and wherein Samuel J. Walker was complain-

ant in a cross-bill filed by him therein and said David Frey, said International Bank, John G. Rogers, George Wilshire, William Wilshire, Alpheus C. Badger and Elvira C. Badger, were defendants thereto; that the general number of said cause last above described is 18,556.

"Your orator further alleges that in the cross-bill of said Samuel J. Walker, so filed in said cause last described, set out various transactions had between him and the said International Bank, and set out in a general way the large number of loans that were made to him by said International Bank, and claimed therein that the same were made upon usurious considerations and at usurious rates, and that all the indebtedness so claimed by the bank against him was tainted with usury, and if an accounting were had between him and the said International Bank upon equitable principles, that he would owe the said bank nothing, and claimed that the usurious interests so paid by him to said bank upon the various transactions between them, should be applied in satisfaction of all the notes or evidence of indebtedness held by the bank against him; that in said cross-bill so filed by said Walker in the cause last referred to, he prayed among other things that an account be taken as between him and your orator, the International Bank, and that your orator be required to make a full, fair and complete statement of all the dealings and transactions had at any time between it and said Samuel J. Walker; and he did also, in his said cross-bill, pray for such other and further relief in the premises as should be agreeable to equity and good conscience; that he prayed for process of summons against your orator, and that your orator might be compelled to answer and abide by the decree of the court in that case upon his, the said Walker's cross-bill. And your orator refers to said cross-bill and claims the same benefit as if it were herein specifically set out—which said cross-bill was so filed by said Samuel J. Walker on December 9th, A. D. 1875.

"Your orator further alleges that on April the 12th, 1876, your orator, the International Bank, filed its answer in said court to the cross-bill so filed by said Samuel J. Walker in the cause last referred to, wherein your orator admitted large and various transactions as alleged in the cross-bill of said Walker in said cause, and admitted that said Walker had been a borrower of money from your orator, and denied that said loans were made on usurious considerations or at usurious rates, and denied that all of the indebtedness

so claimed by your orator against him, the said Samuel J. Walker, was tainted with usury, and denied that if an accounting were had between said Walker and your orator upon equitable principles, that said Walker would not owe the said bank anything, and denied the claim of said Walker that the usurious interest so paid by him to your orator upon the various transactions between them should be applied in satisfaction of all the notes or evidences of indebtedness held by your orator against him, the said Walker. And your orator alleged in said answer set up, that all accounts between it and the said Walker had been adjusted and settled, except the indebtedness evidenced by the notes so held by your orator.

"And you orator denied in its said answer the allegations so made by said Walker that upon a full and fair statement and adjustment of his accounts with your orator, the International Bank, that all the principal notes made by said Walker to your orator or now held by it would be found to be fully paid and satisfied; and it denied the allegations so contained in the cross-bill of said Walker that he did not owe your orator anything, but alleged that said Walker owed it a large amount of money directly evidenced by the notes of said Walker in the possession of your orator; that in order to be more specific as to the allegations and contents of said answer, your orator here refers to the same and claims the same benefit as if it were specifially herein set out; that in said answer your orator joined in the issues tendered to it in said cross-bill of said Walker filed in that cause. That said Walker filed a general replication therein to the answer of your orator in that cause.

And your orator further alleges that in the cross-bill of your orator filed in said cause of George Wilshire, impleaded, etc., against the International Bank, impleaded, etc., being the cause last described, your orator set out its entire indebtedness claimed by it to be due to it from said Samuel J. Walker, and all the promissory notes and other evidences of indebtedness so held by it against the said Samuel J. Walker. And your orator did therein allege that all of said notes and evidences of indebtedness so set out in said cross-bill, were wholly undue and unpaid, and alleged that said Walker refused to pay said indebtedness so due unto your orator.

"And your orator did in said cross-bill last described, among other things, pray for a full, true and perfect answer on the part of said Walker, to all and singular, the

allegations in said cross-bill contained, and that a decree might be entered by this honorable court in said cause, ordering certain premises in said bill described to be sold, and the proceeds thereof applied to the satisfaction of the indebtedness due to your orator from the said Samuel J. Walker.

"And your orator did pray for such other and further relief in said premises as might be agreeable to equity and good conscience; which said cross-bill asked for a rule upon said Samuel J. Walker to answer the same; that in order to be more specific as to the allegations and contents of said cross-bill and to the issues tendered thereby, your orator makes the same a part hereof, and refers to the same and claims the same benefit as if it were specifically herein set out.

"And your orator further alleges that said Samuel J. Walker filed his answer to the cross-bill so filed by your orator, filed in said cause of Wilshire, impleaded, etc., against the said International Bank, impleaded, etc., above referred to on May the 12th, 1877, in which he alleged in substance that he was not indebted to your orator, and denied the allegations of your orator's cross-bill to that effect, and alleged that it would so appear upon a full, fair and equitable accounting between them; and alleged that the indebtedness so set out in the cross-bill of your orator therein, were made upon usurious considerations and at usurious rates, and that any usurious interest so paid by him to your orator, upon the various transactions between them, should be applied in satisfaction of all the notes or evidences of indebtedness held by your orator against him, that said indebtedness would be satisfied. And said Walker further alleged in said answer that he was ready and willing to have an accounting between him and your orator under the order and direction of said court. That in order to be more specific as to the allegations and contents of said answer, your orator makes the same a part hereof and refers to the same, and claims the same benefit as if it were specifically herein set out; that in said answer he, the said Walker, joined in the issues tendered to him in the said cross-bill of your orator filed in that case; that your orator filed its replication to the answer so filed by said Samuel J. Walker in that case; that said case afterward came on to be heard in said Circuit Court upon the issues so tendered by said Walker to your orator, as aforesaid, and upon the issues so tendered by your orator to said Walker as aforesaid, and such

proceedings were had therein, that on the 6th day of July, 1877, an interlocutory decree was entered in said cause last referred to, referring the same to Walter Butler, Esq., one of the masters in chancery of this court, at that time; among other things directing him to take and state an account between your orator and said Samuel J. Walker; that said master did thereupon take and state an account between your orator and said Samuel J. Walker, and found the amount due from said Walker to your orator upon the various indebtedness set out in your orator's cross-bill in said cause, which report of said master bore date January 15, 1878, and was filed in said Circuit Court on the 2d day of February A. D. 1878; that such proceedings were afterward had in said cause; that on the 28th day of February, 1878, a final decree was entered by said Circuit Court in said cause upon the respective issues so tendered, in which said decree the report of said master in chancery was affirmed, and said Samuel J. Walker was found by said court in said cause to be indebted unto your orator, on January 15, 1878, in the sum of one hundred and seventy-two thousand four hundred and seventy-four dollars ($172,474), which amount remained due and unpaid at the date of the entering of said decree with interest; that said Circuit Court had jurisdiction of said cause of said Samuel J. Walker and of your orator and of the subject-matter of said litigation; that said decree so entered in said cause is still in full force and effect, and has never in any manner been reversed, set aside or annulled; that the issues tendered and joined in said cause of George Wilshire, impleaded, etc., against the said International Bank, impleaded, etc., last above referred to, in which said final decree was so entered, are the same as those tendered in the cross-bill of your orator so filed in this cause, Feb'y 17, 1875, and that the relief prayed for in the bill of your orator in this cause is for the same matters and to the same extent as was prayed for by your orator in the said cross-bill so filed by it in said suit of George Wilshire, impleaded, etc., against the International Bank, impleaded, etc., above referred to.

"And your orator alleges that the amount so ascertained to be due unto your orator in the said case of Wilshire, impleaded, against International Bank, impleaded, etc., is the amount due your orator upon the notes set up in his original bill in this cause, and is the amount to which it is entitled, with interest at the rate of six per cent. per annum, from January 15, 1878, and your orator is entitled to have

said amount so declared by this court, to be the amount due to it, based upon the finding and decree in said former suit as heretofore alleged, in bar of any further accounting with reference to the amount due, and as fixing the amount so due to it.

"And your orator sets up said former cross-bill of said Walker, and the former cross-bill of your orator in said suit last referred to, and the answers thereto respectively, and the replications and the several proceedings in said former suit, and the final decree entered therein in bar of the present cross-bill so now being prosecuted by said Robert E. Jenkins, assignee in bankruptcy of said Samuel J. Walker.

"And your orator further alleges that it hoped that in consequence of the said decree above set out, that the said Robert E. Jenkins, assignee as aforesaid, would not have proceeded, and that the said Samuel J. Walker would not have proceeded with the said cross-bill so filed against your orator in this cause, but the said Robert E. Jenkins, assignee, as aforesaid, combining and confederating etc., with the said Samuel J. Walker, notwithstanding the final decree and adjudication above referred to, threatens and intends to proceed with his said cross-bill in this case and to bring the same on for hearing in due course, and the said Jenkins, assignee as aforesaid, pretends that there is no such adjudication in the said case of George Wilshire, impleaded, etc., against the International Bank, impleaded, etc., above referred to, was ever had as above set out.

"And your orator further charges that under the circumstances aforesaid, it is unable to plead or to put the said former adjudication in issue or to use the same as a plea in bar to the said cross-bill, so being prosecuted by said Robert E. Jenkins, assignee as aforesaid, and the said actings and pretenses are contrary to equity and good conscience and tend to the injury and oppression of your orator. In tender consideration whereof, and forasmuch as your orator has no remedy without the assistance of a court of equity, to the end therefore that the said former adjudication above set out may be established and declared by this honorable court a sufficient bar to any further proceedings by the said Robert E. Jenkins, assignee as aforesaid, under and by virtue of said cross-bill and a sufficient adjudication of the amount due unto your orator upon the evidence of indebtedness set out in its original bill, and that the said Robert E. Jenkins, assignee as aforesaid, may, under the circumstances,

be forthwith dismissed with costs, and that your orator may have such other and such further relief in the premises as may be agreeable to equity and good conscience, and which to your honors may seem meet. May it please the court to grant a rule upon said Robert E. Jenkins, assignee, in bankruptcy of Samuel J. Walker, as aforesaid, commanding him to answer this cross-bill of your orator, and to abide by such further order and decree as may be entered herein by this court.

On the 30th Nov., 1883, the assignee filed his *answer to this bill*. (A. R. 82.)

In it *he* says that as to the statements touching the case of *Wilshire* v. *International Bank*, he neither admits nor denies the same and calls for proof.

The answer then sets out that the bill in that case was filed in the Superior Court in March, 1874. That under a stipulation filed Nov. 30, 1875, the venue in the case was changed to the Circuit Court That on the 9th Dec., 1875, Walker filed his cross-bill.

That at the date of said stipulation, and for some time prior thereto, there were pending in the said Circuit Court in chancery divers other causes, wherein the said International Bank was complainant, and the subject matters of which being connected with and growing out of its dealings with said Walker, and the said Walker was also a party, and which were known and designated as follows, viz.:

General Number 16176, Norman Williams et al. v. F. A. Hoffman et al.; General Number 12962, Augustus Bauer v. Samuel J. Walker et al.; General Number 15157, The International Bank v. Samuel J. Walker et al. (being the suit in which this answer is filed); General Number 15549, Berthold Loewenthal v. William Ernst et al.; General Number 15642, Berthold Loewenthal v. Cyrus H. McCormick et al.; General Number 15551, Isaac Fleishman v. Samuel J. Walker et al.: General Number 15979, The International Bank v. Benjamin V. Page et al.; General Number 15550, The International Bank v. John Brennock et al.; General Number 15575, The International Bank v. William Wilshire et al.; General Number 15815, Berthold Loewenthal v. Milford D. Buchanan et al.

That it was deemed advisable by the parties to said suits to make, through their respective counsel, a stipulation, and thereon obtain an order of reference for the taking of testimony and the use of said testimony when taken in said causes, of which stipulation a copy is hereto

attached and made a part of this answer, as "Exhibit B," was filed on the 14th day of May, 1877, and in it this cause is mentioned and referred to as "12962," The International Bank v. S. J. Walker, the use of said number being an evident mistake on the face of the paper.

That afterward and in pursuance of said stipulation, on the 8th of November, A. D. 1875, an order was entered in this cause and all the other causes named in said stipulation, substantially as entered in this cause on that day, to which reference is had.

That said stipulation (of which "Exhibit B" is a copy) was filed on the 14th day of May, 1877, indorsed in the case of "International Bank v Walker," is now and has been among the files of that case, and also had on it the following figures, which were intended to and did represent the general numbers of the causes in court mentioned in it, to wit: "15157," "12962," "15549," "15642," "15551," "15979," "15550," "15575," "15815," "16176," and the number "1533," which was the term number of the case, at that time general number 18556.

That on the 6th day of December, 1875, there was entered in said last mentioned cause, 18556, an order referring the cause to the same master as the other causes above alluded to, and of which order a copy is herewith filed, made part of this answer, marked "Exhibit C," and the common order entered in the other cases is contained in "Exhibit D," entered the 8th November, 1875.

That in pursuance of said stipulations and orders, the parties to said causes, eleven cases in all, proceeded before Walter Butler, Master in Chancery, to take testimony of witnesses and introduce documentary evidence. That in the proceedings before the master on said reference, the whole eleven cases, that is, those stated in the stipulation, "Exhibit B," and the case G. No. 18556, T. No. 1533, Wilshire v. International Bank, were treated as one case, one report of the proceedings before the master was filed, and that was filed among the papers and files in G. No. 12962, Bauer v. Walker et al. That all of said causes came on for hearing and argument in May, 1877, together, before the Hon. E. S. Williams, then judge of this court, on the testimony so reported by the said master, and further testimony heard in open court; all of which testimony as taken, heard and used and the rulings touching the same are set forth in a certificate signed by said judge the 30th day of June, A. D. 1875, and filed in the said cause of Bauer

v. Walker et al., General Number 12962, on the —— day of June, A. D. 1878.

That under the said stipulations and orders of reference thereon made to said Butler, testimony was taken in the said cause No. 18556, Wilshire v. International Bank. The principal note claimed by said Frey in his cross-bill in said cause to be due from said Walker to him, was introduced in evidence before said master on that occasion as Exhibit No. 227; the collateral note of A. C. Badger, also therein mentioned, as Exhibit No. 228, and the trust deed accompanying and securing the same, also therein mentioned, as Exhibit No. 229, and were by said master returned into court upon the face of his report as part thereof, though in fact by agreement of counsel the various exhibits, including the said three above named, were retained by them to put them in evidence respectively, to be produced whenever required, said exhibits last named, 227, 228 and 229, being produced before the master and put in evidence by the counsel for said bank and Frey.

That among the papers and files of said cause No. 18556 is, in the handwriting of A. M. Pence, Esq. one of the solicitors for said bank and Frey, a paper writing in the words and figures following, to-wit:

"Wilshire }
v. }
Bank. }

The testimony in this case is in the larger boxes marked Bauer v. Walker, and the same was taken in connection with ten other cases and used in common.

A. M. PENCE,
Solicitor for Bank."

That inspection of the records and proceedings in the said cases mentioned in said stipulation, filed the 14th day of May, A. D. 1877, and in cause G D No. 18556, will and does show that the orders made in this cause on the 12th day of January, A. D. 1876, for the production of books, and that of July 6th, 1877, referring the cause to the master to take and state an account, were made in said cause G. No. 18556, and in all the others the same draft of the order being used for each case, as will appear from the original drafts, copies of which as prepared by counsel and endorsed by the judge of the court, are herewith filed, made part hereof as Exhibits "E" and "F."

That a stipulation filed in this cause on the 12th day of January, 1876, under the order of that date, was also filed in said cause, General Number 18556, and in all the cases mentioned in said stipulation filed May 14, 1877, so that in fact all of the said cases, including said case G D No. 18556, were as to the testimony in them treated by all parties connected therewith as one cause, and the said written statement made by said Pence as one of the solicitors in said cause, was made by him, and left among the papers in the cause to indicate that fact, and is true in point of fact.

That some time in or about the 2d day of February, A. D. 1878, the precise date this defendant can not now state, said cause, General Number 18556, and the cause G. No. 12962, Augustus Bauer v. Samuel J. Walker et al., and G. No. 15157, The International Bank v. Samuel J. Walker et al., with six other of said causes, *i. e.* 15549, 15642, 15550, 15979, 15575, 15815, came on for hearing and were heard together, argued together, and considered by the court as one cause on the same evidence. That prior thereto, the said master had, on a notice of which a copy is hereto attached, made part hereof and marked Exhibit "G," taken further testimony in the causes mentioned in said notice, which in its caption includes the three causes, General Numbers 12962, 15157 and 18556, as in one cause, making but one report of said testimony, which is filed in said testimony, which is filed in said cause as No. ———. That the issues, the evidence and the rulings of the court and its decree, so far forth as said International Bank on the one side thereof, and Samuel J. Walker on the other are concerned, are identically the same in each one of said causes. That though the decree in case No. 18556 was entered on the 28th day of February, 1878, and those in Nos. 15197 and 12962 not until the 25th April, 1878, the only difference is one of date of entry and not otherwise. That the amount found due the bank from said Walker is identically the same in each case, viz., $172,474.00, upon a master's report, computing the amount upon the same identical notes up to the same date, January 15, 1878. That if the judgment orders and decrees of the court were in any of said cases contrary to law and the equity of the parties, they were so in all. That in each of said cases, Nos. 12962, and 15157, writs of error were on the 18th day of June, A. D. 1878, sued out of the Appellate Court of the First District to said Circuit Court by said Samuel J. Walker, or in his name as plaintiff in error,

and such proceedings where thereupon afterward had; that at the ———— term thereof the decree in said cause No. 15197 in favor of said bank was affirmed, and thereupon on the —— day of ———— a writ of error was sued out of the Supreme Court of the State of Illinois by or in the name of said Walker as plaintiff in error upon the judgment of said Appellate Court, and thereupon afterward such proceedings were had in the Supreme Court that this defendant was substituted as plaintiff in error in place of said Walker, and said judgment of the Appellate Court and the decree of said Circuit Court were on the —— day of————, ————, reversed for error therein, and said cause was remanded with directions to retake the account therein as between said Walker and said bank as by the opinion of said court and its judgment reference being thereto had will more fully appear. That the said cause in said Appellate Court on the writ of error sued out in the Bauer case, No. 12962, was not pressed to an early decision, partly to get all parties in it before the court, there being over one hundred persons defendants to the bill of complaint, and after they were all brought in, then to abide the result of the case in the Supreme Court on the writ of error in the bank case, No. 15157, above mentioned, and was not decided until the —— day of ————, 1881, when the decree was reversed and cause remanded. That the interest of the estate of the bankrupt, S. J. Walker, in the property involved in the case No. 18556, Wilshire vThe International Bank et al., was not deemed of sufficient consequence to justify a writ of error to review that decree and prevent a sale, and so none was sued out at that time; the said writs above named were sued out and all the cases were through a tacit understanding so far as any action in them was concerned beyond selling the property specifically pledged and described in each decree allowed to stand without action until the Supreme Court should pass upon the said bank case No. 15155. That the state of the records in this court in said cases G. Nos. 15157, 12962, 15575, 18979, 18556, 15549, 15815, presents the singular and anomalous fact of seven decrees in as many different cases, each case and decree upon the same identical cause of action for identically the same amount of money, viz., $172,474.00, in favor of the said bank and against said Walker, in each one of which the same erroneous rulings had prevailed, whereby the true state of the account and what was justly due, if anything, from said Walker to the said bank

was prevented from being ascertained and inequitable and unjust decrees entered in each case. That owing to the tedious and protracted litigation in the cause pending in the Supreme Court as aforesaid, the time in which a writ of error could be sued out by the assignee in bankruptcy to review five of these cases was allowed inadvertently to lapse, he being advised that he had five years within which to sue out a writ of error, and in good faith relying upon such advice, whereby, though he sued out a writ of error upon said decrees in No. 18556, and the Appellate Court upon consideration of errors assigned reversed said decrees in favor of said bank and directed the account to be taken over again, yet the Supreme Court of this State held this defendant barred of his writ of error by lapse of two years, the same being pleaded by said bank in bar thereof, and dismissed said writs. That the decree in this, the principal case, that of No. 15157, International Bank v. Walker et al., founded upon the same pleadings, the same issues, the same causes of action to which there was the same defense, the same rulings of the court as to the taking of the account, excluding the same evidence as in case No. 18556, Wilshire v. Bank et al., each case in those particulars being identical with the other, and each case being contrary to and denying the equities of said Walker, and unjust toward him, having upon the merits and because of the want of equity been reversed. it would be highly inequitable and unjust to allow the decree in the said last named case to be now pleaded in bar of the account between the International Bank and the said Walker, touching the same identical matters that are and were involved in all of said cases as between said Walker and said bank, and he prays that the said decree in said case No. 18556, shall not be, as prayed for in said cross-bill by said bank, taken as a bar to the taking of said account upon just and equitable principles as directed by the Supreme Court and Appellate Court, but that the same shall so be taken as though said decree mentioned in said cross-bill had never been rendered, and this defendant prays leave to refer to the several records and other instruments in writing mentioned in this answer when produced for a more full and complete statement of the contents thereof respectively.

DEMURRER.—And this defendant submits and insists that the said bank hath not in and by its supplemental bill made or stated such a case as does or ought to entitle it to any

relief in this court, and upon this point he prays the judgment of the court, and that it be dismissed with costs.

Among the exhibits attached to this answer I desire to call attention particularly to Exhibit E (A. R. 91), with the stipulation indorsed upon it for its entry in the ten cases, where the question of usury was involved.

January 21, 1884, the assignee, by leave of court, filed amendments to his answer to supplemental bill of the bank. They set forth (A. R. 103) to the words "*make and enforce,*" (A. R. 120) the substance of the pleadings by the bank in each of the following cases: No. 12962, Bank v. Walker (A. R. 103); No. 15549, Lowenthal v. Ernst et al. (A. R. 104); No. 15979, Bank v. Page et al. (A. R. 106); No. 15550, Bank v. Brennock et al. (A. R. 107); No. 15575, Bank v. Wilshire et al. (A. R. 107); No. 15815, Loewenthal v. Buchanan et al. (A. R. 108); No. 18556, Wilshire v. International Bank et al. (A. R. 110); a copy of the master's report, dated January 15, 1878, filed Feb. 2, 1878, of amount (A. R. 111 to 118).

And this defendant further answering says that in each of said cases, General Numbers 12962, 15549, 15550, 15979, 15575, 15815, the said master filed a report under the said order of reference made to him in each of said causes on the 6th July, 1877, dated the same day, Jan'y 15, 1878, substantially so far as the principal notes held by said bank were concerned, the same as the one in said case No. 18556, and in this cause No. 15157, that is, its caption, after the entitling of the particular cause beginning with the words, "to the honorable judges," to the words "said statement is as follows," and inclusive, after setting out the amount due on the particular principal note or notes involved in the bill of complaint in the cause, then stating that the "bank introduces its principal notes to obtain surplus as follows," followed by the same notes in each report and the amounts due thereon, and then closing with the statement as herein set out from the words "all of which is respectfully submitted," to his signature, are the same in all of said causes.

And this defendant further answering says that by reason of the said several stipulations herein set out, touching the management and conduct of, and proceedings in said several suits whereby the said several suits were in those respects made one suit, the taking of the testimony thereunder and the hearing of all of the said causes in the master's office as one suit, as in fact was done, the hearing of all of said causes before the court as one suit, as in fact was done, the demands of said bank against said Walker in

each of said suits being common to all of said suits, and made in all of them, the defenses of said Walker to such demands being common to all of said suits and made in all of them, the rights of the said parties, the bank and Walker as between and against each other, touching said demands and defenses, became and were so affected and changed thereby and interlaced and commingled that justice can not now be done to either party by singling out a decree rendered in one of said suits and holding it in this suit to be a bar to an inquiry into the equities of the said parties as between themselves and conclusive upon them touching the premises.

And this defendant further answering says, that the error assigned, and upon which the decree in Bank v. Walker, No. 15157, was reversed by the Supreme Court, and the case of Bauer v. Walker, No. 12962, and the other six cases, 15549, 15550, 15979, 15575, 15815 and 18556, were reversed by the Appellate Court, was that the findings and orders in the interlocutory decree of July 6, 1877, were erroneous, and particularly in this, that thereby the court referred the "cause to Walter Butler, one of the Masters in Chancery of this court, for the sole purpose of ascertaining the amount due upon each principal note, as the same may be ascertained from the evidence heretofore adduced herein, * * * and he is hereby directed to compute such amount so due upon each principal note and each collateral note. * * * The said master is further directed not to consider the question of usurious payments of interest upon any of said notes," whereby the true state of the account between said bank and said Walker upon the issues made in said causes was prevented from being ascertained, as in equity and good conscience it ought to have been, whereby upon the face of the record itself, said order of July 6, 1877, the report of said master thereunder and the decree of said court thereon in said case No. 18556, is highly inequitable and unjust, and not such orders and decrees as this court would or ought now to "*make and enforce.*"

To these amendments down to this point and to all of the original answer filed Nov. 30, 1883, with its Exhibits "A" to "G," (A. R. 82 to A. R. 96,) exceptions were filed (A. R. 126,) Jan'y 21, 1884. These exceptions were sustained by the court, which is assigned as third and seventh error in Appellate Court. (A. R. 187.)

These amendments further set up (A. R. 125) sales made of collaterals with which the bank should be charged.

The bank filed a replication to that part of the answer to its supplemental bill not by it excepted to, and as the certificate of evidence says, (A. R. 131,) the cause came on to be heard in the Circuit Court on the original bill and answers thereto; cross-bill of Austrian and answers thereto; cross-bill of Samuel J. Walker and answers thereto; supplemental cross-bill of Walker and answers; supplemental cross-bill of Jenkins, as assignee, etc., filed in 1881, and answers thereto; supplemental bill of International Bank, filed Nov. 26, 1883, and answers thereto; replication to that portion of the answer to which exceptions had not been sustained; supplemental cross-bill of assignee, filed Nov. 30, 1883, and answers thereto; replications being filed to all of said answers.

And to maintain the issues on their respective parts evidence was offered or introduced as follows:

The complainants in original bill and supplemental bill of the bank, and in the cross-bill of Austrian and others, and the defendants in the cross-bill and supplemental cross-bills of Jenkins, assignee, by Rosenthal & Pence, their solicitors, offered and read in evidence the principal notes belonging to the bank at the time of commencement of suit as the same were described in original bill, to which reference is made, and the originals need not be inserted; also the collateral notes and trust deeds as described in the ordering part of the final decree herein to which reference is made, and the originals need not be inserted in the certificate.

They also introduced the three *general collateral agreements:* 1, dated July 7, 1869 (R. p. 22, ante); 2, dated Dec. 30, 1871 (R. p. 22, ante); 3, dated July 9, 1873 (R. p. 22, ante.)

Admitted name of International Mutual Trust Co. legally changed to International Bank (the complainant) June 18, 1872.

Wilshire v. *International Bank pleadings, etc., introduced.*

Bill of complaint filed March 11, 1874, by William Wilshire and George Wilshire, sets out that on 5th January, 1871, Alpheus C. Badger made his note for $6,666.66, at one year, with interest at 8 per cent., and being the owner of the premises next thereafter described, did, to secure payment of said note, make a trust deed of same date, conveying to J. G. Rogers E. ½ B'k 32, in E. ½ S. 31, T. 39 N., R. 14, in Cook Co., Ill., recorded January 7, 1871, containing power of sale. Afterward J. D. Kinney acquired property,

made a trust deed to Rogers, under which they, W. and G. Wilshire, had obtained title. That Walker, becoming the owner of the Badger note and trust deed, had pledged the same to the International Bank with other notes to secure debts he owed it, and Fry, the assignee of the bank, was about to cause a sale to be made under the trust deed made by Badger to Rogers. That the debt of Walker to the bank was paid, and the assignment to Frey was a colorable one and pledged for injunction to stay the sale, making the bank, Rogers, Walker and David Frey parties defendant. This bill was filed in the Superior Court of Cook County March 11, 1874, and in the Circuit Court December 7, 1875.

Cross-bill of Samuel J. Walker, filed December 9th, 1875, in 18556, sets forth the filing of the original bill in the Superior Court, on the 11th of March, 1874, and the subsequent pleadings and changes of venue to the Circuit Court.

This contains the same averments as the answer to the original bill, as to his business dealings with the International Bank.

That he is by reason of the premises entitled to have the Badger note and trust deed surrendered up to him. That it was given in the course of his dealings with said bank, and is fully paid and satisfied without consideration, or upon an usurious consideration, and so it will appear upon a full and fair disclosure of all said dealings and transactions, and he claims such discovery and relief accordingly.

Prayer—Answer without oath that the $5,000 Badger note and trust deed be surrendered to him.

That an account be taken in the premises between him and the bank, and it required to make a full, fair and complete statement of all dealings and transactions had at any time between it and him.

That Frey, under the circumstances, be held to be a holder of said $5,000 note, subject to the equities of complainant touching the same, and the taking of the account. And that if it appears, upon taking said account, that said $5,000 note is usurious, or fully paid and satisfied, that then it and the Badger note and trust deed be surrendered—and for general relief. Process prayed against Frey, the Bank, Rogers, G. and W. Wilshire, and A. C. and E. C. Badger,

Answer of Bank to cross-bill of S. J. Walker, filed 12th April, 1876, in 18556. (A. R. 134.)

The cross-bill of International Bank, filed 12th April, 1876, in 18556 (A. R. 135).

The answer of Samuel J. Walker, filed May 10, 1877, to

rcoss-bill filed April 12, 1876, of the bank, in No. 18556 (A. R. 137).

The interlocutory order of July 6, 1877, referring cause to master and excluding defense of usury (A. R. 143).

The report of the master under that order, filed February 2, 1878 (A. R. 145).

The final decree, 28th February, 1878, in 18556 (A. R. 146.)

This finds (A. R. 148):

"That said Samuel J. Walker was indebted unto the said International Bank on January 15, A. D. 1878, the date of said master's report, in the sum of $172,474, which still remains due and unpaid, and said bank is entitled to whatever surplus may remain upon the foreclosure of said premises after the satisfaction of said principal note of said David Frey, not exceeding the amount so found due upon said collateral note."

All of them objected to by assignee.

Objection overruled and exception (A. R. 148).

THE ASSIGNEE'S EVIDENCE.

Decree in this cause of April 25, 1878, set out as part of the record (ante R. p. 67).

Order of Appellate Court reversing that decree, filed April 11, 1871 (ante R. p. 74).

Offer of proof: The assignee also offered to prove each and all of the same facts, matters and things, instruments in writing and records stated and set forth in that part of his answer filed Nov. 30, 1883, to the supplemental bill of the bank, commencing with the words, "that at the date," in line 27 of page 3 (R. p. 83), to the words, "been rendered," in line 27 of page 14, inclusive (R. p. 88), and in the amendments to said answer from the 1st page (R. p. 103), to the end of 26th page (R. p. 120), inclusive, separately and severally considered, which was objected to by said complainants and such objection sustained by the court, and each and all of said matters, etc., separately and severally considered, excluded, to which ruling the said assignee then and there excepted.

Motion for account by International Bank (A. R. 170). Whereupon counsel for the bank moved for an account in said cause; and that the court should take as a basis in ascertaining the amount due to it, the bank, the amount found due by the decree in said case of Wilshire v. International Bank, numbered 18556, being the sum of $172,474 on Jan-

uary 15, 1878, with interest thereon at the regular rate; and that the said bank should be charged with all sums collected or realized since January 15, 1873, from the collaterals in its hands so pledged to it by Samuel J. Walker, and that interest thereon should be computed in the usual way, where partial payments are made.

Limitation. Assignee sets up Sec. 5057, R. S. of U. S., in bar of judgment, and insisted that the said decree as a cause of action against him as such assignee in bankruptcy was thereby barred. Overruled by court, and exception.

Said assignee further insisted that as said decree covered and included the claims and demands of said bank against said S. J. Walker, and the same were merged therein, and the said decree was now extinguished by lapse of time as against him, that the claims and demands so covered, included and merged were also extinguished and no longer existed; and that in the account to be taken in this cause he was entitled to the proceeds of the collaterals when disposed of, or the collaterals themselves, when not disposed of; and thereupon moved that the said bank be so charged in taking said account. Which motion the court denied and assignee excepted.

Thereupon Rosenthal & Pence tender as to the items of said account to be taken and stated, the following:

Bank's statement of the account to February 16, 1884, date of decree (A. R. 182).

1878, Jan. 15—			
To amt. as per decree, Feb. 28, '78, and Apr. 28, '78			$172,474 00
By collection on collateral G. Bradford, Apr. 30, 1877	$ 18 00		
By collection on collateral F. Boehm, Oct. 23, 1877	35 00		
By collection on collateral, F. Boehm, Nov. 13, 1877	70 00		
By collection on collateral, F. Boehm, January 15, 1878	142 80		
By note 2701 Ex. 40 as per stipulation of Jan. 12, 1882, treated as paid Oct. 12, 1873, amt. of note	$4,000 00		
Interest from Oct. 12, 1873, Jan. 15, 1878	1,022 00	5,022 00	5,287 80
			$167,186 20

The account proceeds with debit and credit to date of decree, when a balance is found of... $143,630 22

To which and to each and all of the items thereof the said assignee then and there excepted, and files his objections as follows:

Exceptions to bank account.

Exceptions taken by the said assignee to the statement of the account (marked A. A.) presented by said bank to the court in this cause.

The said assignee objects to the items in said account following, viz.:

1st. To the decree for $172,474.00, for the reasons and on the grounds stated in the pleadings and certificate of evidence, and other objections to various items.

Decree entered Feb'y 16, 1884. (A. R. 129.)

And now this day comes on to be heard said cause upon the pleadings and evidence. And said assignee, under the demurrer contained in his answer to the supplemental bill of the bank, insists that the said decree in said case, No. 18556, Wilshire et al. v. International Bank et al., as a cause of action against him is barred by Section 5057 of the R. S. of U. S., and thereupon, after argument had, the court doth overrule said demurrer, and holds the cause so assigned to be insufficient as grounds for sustaining the same.

And it appearing to the court therefrom, the court finds that there was due the International Bank from Samuel J. Walker on 15th Jan'y, 1878, the sum of $172,474, as there found and ascertained by the decree of this court in a certain cause lately pending in this court on the chancery side thereof wherein George Wilshire and others were complainants and the said International Bank and others were defendants, and wherein the said bank was complainant in a cross-bill therein and S. J. Walker and others defendants thereto, and wherein Walker was complainant in his cross-bill therein and the bank and others defendants thereto; the general number of which cause was 18556, and is the same case set up by the supplemental bill in this cause. And, after application of all moneys collected by said bank since January 15, 1878, from said Walker or from securities held by it which were pledged to it by said Walker, the court finds that there is now due said bank from said Walker the sum of $143,630.22, as stated in the certificate of evidence herein.

And the court further finds that said Walker pledged and

delivered to said bank collateral securities from time to time, some of which were pledged to secure a specific portion of said indebtedness, and others were pledged as a general security for the entire indebtedness. That those collaterals which were pledged as a security for a specific indebtedness were also, by agreement between said bank and Walker, to be held as a general security for all said indebtedness after the satisfaction or payment of such specific indebtedness. That the remainder of those securities, which were pledged only as general security, and which have not been foreclosed or collected, are those hereinafter described in the ordering part of this decree. That the collaterals which were specifically pledged for certain specific indebtedness have either been collected or are in process of collection by foreclosure in other suits. And the court being now fully advised in the premises, upon motion of Rosenthal & Pence, solicitors of said bank and others, it is

Ordered, adjudged and decreed by the court that the equities of the case are with the said International Bank; and that the cross-bill filed by Samuel J. Walker, and the amendments and supplement thereto filed by him are hereby dismissed for want of equity. And that the supplemental cross-bill of Jenkins, assignee, etc., filed November 30, 1883, herein be dismissed for want of equity, and that the cross-bill of Joseph Austrian and others, on motion of their solicitor, is hereby dismissed without prejudice.

That Walker, his assignee or any other party to suit may within 20 days pay into court the said sum of $143,630.22, the amount found due bank, with interest from date. And in case of such payment within that date or before sale, as hereafter directed, the person so paying the same shall receive from the said bank all securities which are still held by the bank, and which were so pledged to it by said Walker, and which have not been enforced, collected and applied upon the amount due the bank.

In default thereof for twenty days directs the sale by Wait, master, etc., of the following described securities, or so much thereof as may be necessary, setting them out.

Directs mode of sale, execution of bills of sale to purchaser, which shall vest an absolute title in him; if any surplus, master shall distribute the same as hereafter directed by the court.

Appeal prayed and allowed.

In each and all of which matters said statement is erroneous, and such items should not enter into the account in the cause, and he moves to exclude the same.

Which are overruled by the court, and the said assignee then and there excepted, and thereupon the court finds the amount to be one hundred and forty-three thousand six hundred and thirty dollars and twenty-two cents, as stated in said account due this day, Feb'y 16, 1884.

ERRORS ASSIGNED ON THE APPEAL TO THE APPELLATE COURT OF FIRST DISTRICT OF ILLINOIS.

1st. The Circuit Court rendered a decree for the said International Bank and against said assignee, whereas it should have rendered one in favor of said assignee and against said bank, granting him the relief prayed for in his bills, cross and supplemental, filed in said cause.

2d. The Circuit Court dismissed the cross-bill filed by Samuel J. Walker, the supplemental cross-bill filed by said assignee the 28th June, 1881; the supplemental cross-bill filed by him the 30th day of November, 1883.

3d. The Circuit Court sustained the exceptions of said International Bank to the answer of said assignee, as amended and filed Jan'y 21, 1884, to the supplemental bill of said bank filed the 26th day of November, 1883.

4th. The Circuit Court overruled the demurrer of said assignee to the supplemental bill of said bank filed the 30th day of November, 1883.

5th. The Circuit Court admitted improper evidence on the part of the appellees, and excluded proper evidence on the part of the appellant, on the hearing of the cause.

6th. The Circuit Court admitted the proceedings and decree in the case of Wilshire et al. against the International Bank et al.

7th. The exclusion of proof of the facts, matters and things set forth in that part of his answer, and the amendments thereto, to the supplemental bill of the bank, filed 26th of November, 1883, to which exception had been sustained.

11th. The holding the decree rendered in the case of Wilshire et al. vs. The International Bank et al. to be binding on the assignee, and the basis upon which to charge him with the amount thereof in the account between the bank and said assignee.

12th. In refusing to hold said decree barred and extinguished by the limitation law of the bankrupt act of the United States, section 5057.

13th. In holding that all the claims of the bank were merged in the said decree, and then refusing to hold said decree barred and extinguished by said section of the bankrupt law, and the assignee entitled to the securities or the proceeds thereof, involved in this suit, and an account touching the same.

16th. In stating the account as found, and each and every item thereof.

17th. In overruling the several exceptions taken by the assignee thereto.

19th. And in other respects said decree is erroneous, and should be reversed and set aside, and he restored, etc.

ERRORS ASSIGNED IN THE SUPREME COURT OF ILLINOIS:

On the appeal by assignee from the judgment of affirmance in the Appellate Court at its March Term, 1884.

That the Appellate Court of the first district did not sustain the errors assigned upon the decree of the said Circuit Court, each severally considered, and affirmed the said decree, whereas it should have reversed the same.

ERRORS ASSIGNED IN THE SUPREME COURT OF THE UNITED STATES. (A. R. 15.)

The plaintiff in error, by his attorney, William T. Burgess, comes and says that in the record, proceedings and judgment aforesaid there is material error manifest of record, in this:

First. That the Supreme Court of Illinois held the decree in the case of Wilshire *et al.* vs. International Bank of Chicago *et al.*, relied on in pleading, and introduced in evidence in and before the Circuit Court of Cook County, Illinois, by the defendants in error, not barred as against him, the said plaintiff in error, as such assignee in bankruptcy as aforesaid, under and by virtue of the statutes of the United States in that behalf provided, whereas it should have held it so barred.

Second. That the Supreme Court of Illinois affirmed the

judgment of the Circuit Court aforesaid in overruling the demurrer of the plaintiff in error to the supplemental bill of complaint of said International Bank against him.

Third. That the Supreme Court of Illinois held that the said plaintiff in error as such assignee in bankruptcy as aforesaid, acting under the statutes of the United States in that behalf provided, had not the right and refused to allow him to show that the said decree was inequitable, erroneous and unjust, and ought not to be enforced as against him, whereas it should have held that he had such right and allowed him to do so.

Fourth. That the Supreme Court of Illinois affirmed the judgment of the said Circuit Court, sustaining the exceptions taken by the International Bank to the answer of the said plaintiff in error to the supplemental bill of complaint of said bank.

Fifth. That the Supreme Court of Illinois affirmed the judgment and order of the said Circuit Court in excluding the evidence offered by the plaintiff in error touching said Wilshire decree.

Wherefore he prays that the judgment of the said Supreme Court of Illinois aforesaid, be reversed, etc., and he restored, etc.

Argument.

The original bill filed in this cause in the Circuit Court of Cook County, Illinois, in chancery, on the 17th of February, 1875, by the International Bank, one of the defendants in error in this court, against Samuel J. Walker, afterward declared bankrupt, and other persons, was strictly a bill to foreclose his rights and equity of redemption in and to certain collaterals, viz., two notes which were unsecured and a large number of other notes which were secured by trust deeds on real estate situate in said county which are described in the bill, and a descriptive list of which, with others given by Walker to it, is contained in three tables given in Agreed Record Nos. 1, 2 and 3, pp. 163 to 166. The prayer for relief was (A. R. 132) for a decree fixing and establishing amount of indebtedness due by Walker to complainant, the bank, and for sale of all collateral securities pledged to it, proceeds to be applied upon such indebtedness, and surplus distributed as to justice and equity might appertain.

The answer of Walker to this bill admits the pledging of

securities but denies any indebtedness, sets up usury in the dealings between him and the bank as a defense, and prays for an accounting, etc. (A. R. 35 *et seq.*) Walker, with this answer, also filed a cross-bill, going over the same ground substantially as, and a mere repetition of his answer. (A. R. 38 *et seq.*) To this cross-bill the bank filed a demurrer June 5, 1875 (A. R. 46), the proper course to have taken with it, but on the 15th of June, 1875 (A. R. 47), it withdrew the demurrer and filed an answer. This is mere detail of matters connected with the business of loaning money done between it and Walker, out of and in the course of which the notes set out in the tables above alluded to were given, and neither it nor the cross-bill contain anything that could not have been given in evidence under the original bill and answer to it, or in the master's office upon the accounting.

The cause was by consent referred to the master by the order of July 6, 1877 (A. R. 65), who under it made a report February 2, 1878, finding due from Walker to the bank on the 15th January, 1878, the sum of $172,474, which the decree entered April 25, 1878 (A. R. 69), confirms, and then orders that S. J. Walker pay the bank the sum of $172,474, with interest at six per cent. from Jan. 15, 1878, and in case of default for twenty days thereafter directs the sale of the collateral securities held by the bank.

But before this decree was entered this Wilshire decree was, on the 28th Feb'y, 1878, entered on a report of the master dated Jan'y 15, 1878, (A. R. 145,) made under the same kind of order entered July 6, 1877, finding the same amount due the bank from Walker on the same notes. This decree directed to be paid the bank only the surplus after the satisfaction of the principal note held by Frey, as assignee of the bank made by Walker to it, out of the collateral note held with it. It finds (A. R. 148) "That said Samuel J. Walker was indebted to the said International Bank on January 15, A. D. 1878, the date of said master's report, in the sum of $172,474, which still remains due and unpaid, and said bank is entitled to whatever surplus may remain upon the foreclosure of said premises after the satisfaction of said principal note of said David Frey, not exceeding the amount so found due upon said collateral note."

And it is to be noted in connection with the fact that the decree in the Wilshire cause was rendered the 28th Feb'y, 1878, that it was just as much a bar to the accounting on the 25th April, 1878, when the first final decree in this cause was rendered, as it was on the 16th day of February, 1884,

when the last one, the one before this court, was rendered; why was it not pleaded then? why did not the bank take the same course and plead it then that it takes now? simply if it had attempted it then the legal fraud of taking eight different, independent decrees for the same identical cause of action could not have been perpetrated, and the fact that it slept on its rights then and afterward, until the two years in which the assignee could reverse the decree in that case, ought not to be without its weight in this court in deciding the questions presented by this record.

The decree in the case at bar being reversed and cause remanded, then, as a *defense to the cross-bill of Walker*, the bank, on the 23d of November, 1883, filed a supplemental bill, setting up this Wilshire decree as a bar to an accounting *under the cross-bill*. This bill was answered by the assignee setting up the inequity and injustice of the Wilshire decree, and the matters showing it to be so, to all of which exceptions were taken and those exceptions sustained. It also contained a demurrer upon which *ore tenus* at the hearing (A. R. 129), the Statute of Limitations of the United States was raised as a cause of demurrer, but overruled by the court, and a final decree was entered Feb'y 16, 1884 (A. R. 129); that "after application of all moneys collected by said bank since January 15, 1878, from said Walker or from securities held by it which were pledged to it by said Walker, the court finds that there is now due said bank from said Walker the sum of $143,630.22, as stated in the certificate of evidence herein."

There is no substantial difference between any of these three decrees as to each one of them being a finding at the time of rendition of the amount due from Walker to the bank binding upon his assignee in bankruptcy as such, so that, if the assignee could complain of the one rendered in the case at bar on the 25th of April, 1878, which he did, and successfully, or of the one Feb'y 28, 1878, in the Wilshire case, which he did, and unsuccessfully, because he did not sue in time (*Jenkins* v. *Int. Bank*, 106 U. S. R. 571), he has a right also to complain of this decree of Feb'y 16, 1884, in the case at bar, and now before this court, and the questions are: Do any of the matters in the record of the proceedings and decree in the case before the State court complained of by him, present what is called "federal questions," and, did the State court err in the decisions made touching them?

I.

LIMITATION.

The bar of Sec. 5057, Rev. Statutes, U. S., in favor of assignee in bankruptcy to the claim of the International Bank based on the Wilshire decree.

At I have stated, the decree of Feb'y 16, 1884, finds there was then due from Walker to the International Bank the sum of $143,630.22. (A. R. 129.) Its language does not admit of dispute, and equally so, that it was based on this Wilshire decree as "the cause of action."

It begins by a recital that the cause was heard upon the pleadings and evidence. The assignee called up his demurrer to the supplemental bill of the bank and insisted "that the said decree" in the Wilshire case, "as a cause of action against him, is barred by section 5057 of the Revised Statutes of the United States;" but his demurrer was overruled; then follows this (A. R. 129):

"And it appearing to the court therefrom, the court finds that there was due the International Bank from Samuel J. Walker on 15th January, 1878, the sum of $172.474, as then found and ascertained by the decree of this court in a certain cause lately pending in this court on the chancery side thereof, wherein George Wilshire and others were complainants and the said International Bank and others were defendants, and wherein the said bank was complainant in a cross-bill therein and S. J. Walker and others defendants thereto, and wherein Walker was complainant in his cross-bill therein and the bank and others defendants thereto; the general number of which cause was 18556, and is the same case set up by the supplemental bill in this cause. And, after application of all moneys collected by said bank since January 15, 1878, from said Walker or from securities held by it which were pledged to it by said Walker, *the court finds that there is now due said bank from said Walker the sum of $143,630.22, as stated in the certificate of evidence herein.*"

The certificate of evidence (A. R. 182) begins the account with the item: "1878. January 15. To amount as per decree February 28, 1878, and April 28 (25), 1878, $172,474," and concludes (A. R. 185) with a balance, growing out of and based on the item first given, of $143,630.22.

The objection was taken by the assignee to this decree of February 16, 1884, for $143,603.22, that it was based on a

cause of action, the so-called Wilshire decree of February 28, 1878, barred by §5057 of Revised Statutes of United States, and so a violation of that statute.

The decree in this case is what was said of the Wilshire decree and three others of the same tenor, in *Jenkins* v. *International Bank et al.*, 106 U. S. R., p. 571. "This (the Wilshire decree) would be evidence whether conclusive or not, of the right of the bank to share in the dividends of the bankrupt's estate."

When the supplemental *bill* was filed, Nov. 30, 1883, in this case, upon which the decree in question was rendered, the bank could not have taken the Wilshire decree of Feb'y 28, 1878, into the bankrupt court and used it as evidence of its demand or claim, being barred by the statute; yet it recovered in this case a decree which it can so use, clearly in violation of that section of the Revised Statutes of the United States.

That being the result of the decree of the Circuit Court of Feb'y 16, 1884, affirmed by the Supreme Court of Illinois Nov. 17, 1884, the assignee in bankruptcy sued out his writ of error to the October term, 1885, of this court, this time within the two years.

The Supreme Court of Illinois filed its opinion in the case which comes up as part of the record, (A. R. p. 2,) and before commenting on that opinion it may be well enough to again call the court's attention to the peculiar state of the pleadings in this case as the record shows them to be and the law springing out of it.

As I have said the original bill is a bill of foreclosure and for the purposes of accounting redemption, sale and surrender of securities, no cross-bill is necessary on the part of the defendant making the mortgage. The cases on the subject in this State are given in

Soles v. *Sheppard*, 99 Ill. 616–621.

"In foreclosing a mortgage where junior mortgagees and incumbrancers are parties defendant, a cross-bill is unnecessary unless affirmative relief is sought. The foreclosure of the prior mortgage affords relief to all subsequent incumbrances, as they have the right, when parties defendant, to participate in the distribution of the surplus: *Ellis* v. *Southwell*, 29 Ill. 549; *Derrick* v. *Lamar Ins. Co.*, 74 Id. 404; *Walker* v. *Abt*, 83 Id. 226; *Crocker* v. *Loewenthal*, Id. 579; *Labader* v. *Hewitt*, 85 Id. 341; *Shaver* v. *Williams*, 87 Id. 469; *Edgerton* v. *Young*, 43 Id. 464. *This is a settled doctrine of this court, and from it there was not the slightest necessity for filing the cross-bill.*"

Akin v. *Cassiday*, 105 Ill. 22–24. "The unnecessary and useless filing of the cross-bill in this case has but incumbered the record, and tended to introduce confusion and increase costs. It should have been dismissed had a motion been entered for that purpose: *Morgan* v. *Smith*, 11 Ill. 194. It introduced no matter not already set up as a defense in the answer. Had that defense been allowed, the original bill would have been dismissed, and that would have been as effectual to bar all future claims under the mortgage, as a decree declaring it void and inoperative. The dismissal would have been the same in effect."

Walker filed a cross-bill to the original bill in this cause. (A. R. 38.) Instead of demurring to it or moving to strike it from the files as a useless lumbering up of the record, the bank saw fit to file a supplemental bill setting up as a defense to it this Wilshire proceedings and decree. It is treated by the Supreme Court of Illinois as of that character. But what in fact is it? Is it a pleading aimed exclusively at that cross-bill, or does it include within its scope the original bill, so that it supersedes that?

It begins by setting forth the filing of the original bill in this cause 17th of February, 1875, and its allegations and prayer in a general way, and refers to it for its contents. That Walker filed his answer thereto and a cross-bill to which the bank answered. That the cause was at issue and undisposed of. That on the 25th of April, 1878, a decree was rendered, finding the amount due the bank on the indebtedness set out in the bill to have been, January 15, 1878, $172,474, at the date of the master's report filed in the cause.

And by way of supplement, the reversal of that decree, April 26, 1878, S. J. Walker went into bankruptcy, and on the 31st of July, 1878, Jenkins was appointed his assignee in bankruptcy; that Jenkins, on his application to this court, after the said reversal, was allowed to defend and prosecute said cross-bill filed herein by said Walker and duly instituted in place of said Walker herein. That said cause has not been heard since its reversal. It then proceeds to set forth the proceedings in the Wilshire case stating the issues made under the pleadings and that said case afterward came on to be heard in said Circuit Court upon the issues so tendered by said Walker to your orator, as aforesaid, and upon the issues so tendered by your orator to said Walker as aforesaid, in that cause, and such proceedings were had therein, that on the 6th day of July, 1877, an in-

terlocutory decree was entered in said cause last referred to, referring the same to Walter Butler, Esq., one of the Masters in Chancery of this court, at that time; among other things directing him to take and state an account between your orator and said Samuel J. Walker; that said Master did thereupon take and state an account between your orator and said Samuel J. Walker, and found the amount due from said Walker to your orator upon the various indebtedness set out in your orator's cross-bill in said cause, which report of said Master bore date January 15, 1878, and was filed in said Circuit Court on the 2d day of February, A. D. 1878; that such proceedings were afterward had in said cause; that on the 28th day of February, 1878, a final decree was entered by said Circuit Court in said cause upon the respective issues so tendered, in which said decree the report of said master in chancery was affirmed, and said Samuel J. Walker was found by said court in said cause to be indebted unto your orator, on January 15th, 1878, in the sum of one hundred and seventy-two thousand four hundred and seventy-four dollars ($172,474), which amount remained due and unpaid at the date of the entering of said decree with interest; that said Circuit Court had jurisdiction of said cause of said Samuel J. Walker and of your orator and of the subject-matter of said litigation; that said decree so entered in said cause is still in full force and effect, and has never in any manner been reversed, set aside or annulled; that the issues tendered and joined in said cause of George Wilshire, impleaded, etc., against the said International Bank, impleaded, etc., last above referred to, in which said final decree was so entered, are the same as those tendered in the cross-bill of your orator so filed in this cause February 17, 1875, and that the relief prayed for in the bill of your orator in this cause is for the same matters and to the same extent as was prayed for by your orator in the said cross-bill so filed by it in said suit of George Wilshire, impleaded, etc., against the International Bank, impleaded, etc., above referred to.

And your orator alleges that the amount so ascertained to be due unto your orator in the said case of Wilshire, impleaded, against International Bank, impleaded, etc., is the amount due your orator upon the notes set up in his original bill in this cause, and is the amount to which it is entitled, with interest at the rate of six per cent. per annum, from January 15, 1878, and your orator is entitled to have said amount so declared by this court, to be the amount due

to it, based upon the finding and decree in said former suit as heretofore alleged, in bar of any further accounting with reference to the amount due, and as fixing the amount so due to it.

And your orator sets up said former cross-bill of said Walker, and the former cross-bill of your orator in said suit last referred to, and the answers thereto respectively, and the replications and the several proceedings in said former suit, and the final decree entered therein *in bar of the present cross-bill* so now being prosecuted by said Robert E. Jenkins, assignee in bankruptcy of said Samuel J. Walker.

And your orator further alleges that it hoped that in consequence of the said decree above set out, that the said Robert E. Jenkins, assignee as aforesaid, would not have proceeded, and that the said Samuel J. Walker would not have proceeded with the said cross-bill so filed against your orator in this cause, but the said Robert E. Jenkins, assignee, as aforesaid, combining and confederating, etc., with the said Samuel J. Walker, notwithstanding the final decree and adjudication above referred to, threatens and intends to *proceed with his said cross-bill in this case* and to bring the same on for hearing in due course, and the said Jenkins, assignee as aforesaid, pretends that there is no such adjudication in the said case of George Wilshire, impleaded, etc., against the International Bank, impleaded, etc., above referred to, was ever had as above set out.

And your orator further charges that under the circumstances aforesaid, it is unable to plead or to put the said former adjudication in issue or to use the same as *a plea in bar to the said cross-bill*, so being prosecuted by said Robert E. Jenkins, assignee as aforesaid, and the said actings and pretenses are contrary to equity and good conscience and tend to the injury and oppression of your orator. In tender consideration whereof, and for as much as your orator has no remedy without the assistance of a court of equity, to the end therefore that the said former adjudication above set out may be established and declared by this honorable court *a sufficient bar to any further proceedings by the said Robert E. Jenkins, assignee as aforesaid, under and by virtue of said cross-bill* and *a sufficient adjudication of the amount due unto your orator upon the evidence of indebtedness set out in its original bill*, and that the said Robert E. Jenkins, assignee as aforesaid, may, under the circumstances, be forthwith dismissed with costs, and that your orator may

have such other and such further relief in the premises as may be agreeable to equity and good conscience, and which to your Honors may seem meet. May it please the court to grant a rule upon said Robert E. Jenkins, assignee in bankruptcy of Samuel J. Walker, as aforesaid, commanding him to answer this cross-bill of your orator, and to abide by such further order and decree as may be entered herein by this court.

As a matter of pleading touching Walker's cross-bill, the result of granting the prayer of this bill should have been to dismiss Walker's cross-bill, and leave the original bill just as it stood, and the account to be taken under it and the answer to it. The account could not be taken under the cross-bill, and dismiss it at the same time.

But this was only an ingenious method adopted by counsel to avoid the bar of the statute. It was useless for any other purpose, and it subserved that purpose, as I think the opinion of the Supreme Court of Illinois, when analyzed, will show. It says:

"The bill of the bank prayed for, establishing the amount of indebtedness due the bank from Walker and an account, would have had to have been taken under that and Walker's answer setting up the payments of usurious interest. Walker's cross-bill did pray for an accounting, but the cross-bill was not needed for that; its only necessity was to obtain the affirmative relief of having surrender of the collaterals made to him." (A. R. 4.)

But if the law is as laid down in the cases I have cited, it was not necessary for that. There was never a bill to foreclose filed that would not justify a cross-bill if it were needed for any such purpose as that; because, in every case the mortgagor has the right to his securities on paying the debt due from him, and he can not be compelled to pay the money without such surrender.

In this case the Supreme Court of Illinois say: "Walker's cross-bill did pray for an accounting, but the cross-bill was not needed for that; its only necessity was to obtain the affirmative relief of having surrender of the collaterals made to him." But by the cases I have cited, that court has held that a cross-bill is not necessary for that.

Again, the court in this opinion say: "With respect to a matter of defense which arises after the cause is at issue, it is laid down that the defendant can not avail himself of the defense by plea or answer, but must make the same the subject of a cross-bill. (Story Eq. P. C. § 393.)

And so when the complainant in a bill would assert such matter of defense to a cross-bill, the proper mode we take to be by a supplemental bill." But suppose the cross-bill is simply a superfluity utterly unnecessary for any purpose whatever, why go through the filing of a supplemental bill to get it dismissed, instead of dismissing it on motion or by demurrer? Are not the issues on the original bill and Walker's answer to it still before the court to be acted upon? Is the Wilshire decree any evidence under the pleadings upon which that issue is made? This supplemental bill must be held to be supplemental to the original bill so as to make its averments supersede and take the place of averments in the original, or it, this supplemental bill, has gone out of the case entirely when Walker's cross-bill for "a surrender of his securities" was dismissed. It is usually the case that, when a cross-bill is dismissed, the relief prayed for in it is denied the party; but is not Walker *entitled to a surrender of his securities if he paid the debt*, so that one portion of a decree would deny him a right which another portion recognizes and saves to him? Is not this the climax of absurdity?

But it is necessary to keep this cross-bill in the cause and solemnly argue upon it as a necessary paper in order to say that the Wilshire decree is not the cause of action relied on, superseding the cause of action set out in the original bill.

The quotation I have given last is immediately followed by this:

"The notes of Walker to the bank were introduced in evidence here, and there was no necessity of resort to the Wilshire decree as fixing the amount due the bank, the Wilshire decree being for just the amount of the notes."

If there was no necessity for a resort to the Wilshire decree, why does the account stated by the bank commence with the item of the amount due on that decree of $172,474? Why does the decree itself in its recitals say (A. R. 129) there was due from Walker to the bank $172,474 as found by the Wilshire decree?

But the decree in the Wilshire case included interest on the Walker notes up to the day of its rendition, for about four and a half years, at six per cent., consequently that decree included the principal of the notes, in round numbers, $135,800, and the interest, $36,674, on which latter sum interest is computed in the present decree, which would not be the case if the notes were used as the cause of action and the basis of this decree.

The notes were introduced in evidence, not as the basis of the decree now before the court, but as identifying the basis of the Wilshire decree with the debt for which the securities were held, so that the statement in the opinion, "the Wilshire decree being for just the amount of the notes," needs to have added to it the further statement, "and interest from the time they fell due," and when that is made it is self-evident that the cause of action is not the same. *For in the one case, that upon the notes, interest would have run only on the principal of the notes, while in the other, that on the decree, it runs on the principal and interest combined.* "But it is said the notes were merged in the Wilshire decree, and no longer existed as a cause of action—that the only cause of action afterward was upon the decree, and all right had to be asserted upon it as the cause of action, and hence the necessity of a supplemental bill making the decree the cause of action, and that against that as the cause of action the statute has run."

The Supreme Court of Illinois said in *Emory* v. *Keighan*, 88 Ill. 482–488, that "an action at law for the recovery of a judgment upon the mortgage note, brought before the bar of the statute on the note, arrests the running of the statute, and if prosecuted to judgment, even after the lapse of the sixteen years, merges the note in the judgment, changes the form of the debt and extends the time in which proceedings may be taken to compel payment of the debt, *until the time for barring actions on the judgment, under the statute, shall have elapsed.*"

That is just what I claim here. That the decree in the Wilshire case—1. "Merged the Walker notes in the decree." 2. "Changed the form of the debt." 3. "Extended the time in which proceedings might be taken to compel payment of the debt, *until the time for barring actions on the judgment, under the statute, shall have elapsed,*" BUT NOT BEYOND.

In the case at bar the Statute of Limitations invoked by the assignee in bar of an action on this decree, is that of the United States of two years, and has elapsed. That it is two instead of twenty or sixteen years, or one year, makes no difference in the principle. The notes are merged in the decree, and that decree barred by the United States Statute of Limitations.

Now if the above case is the law, what follows in the opinion of the same court in the case at bar, can not be.

"We do not consider the supplemental bill as introducing a new cause of action. *The indebtedness is the same.*" But I

have shown above that the indebtedness is not the same. By the decree it is $174,474, principal drawing interest from Feb'y 28, 1878; by the notes it is $135,800, principal drawing interest from about November, 1873. See A. R. 31.

"The evidence of it at the time of filing the original bill in this case consisted in notes of Walker to the bank. The notes have since, as said, become merged in the Wilshire decree. There has been, then, a change in the evidence of the indebtedness, from notes to a decree upon them; that is all. The collaterals sought to be foreclosed by sale of them were pledged for the payment of the indebtedness. A decree upon the notes and the running of the Statute of Limitations against the decree is not any payment of the indebtedness." But it is said in *Emory* v. *Keighan, supra*, "a judgment on the mortgage note * * * merges the note in the judgment, changes the form of the debt, and extends the time in which proceedings may be taken to compel payment of the debt, until the time for barring actions on the judgment, under the statute, shall have elapsed."

It is true that the statute then in contemplation was twenty years, but when the twenty years ran out could the party revert to his notes? When the bar of the statute reaches the judgment the party then is without remedy either on his notes merged in the judgment or the notes themselves.

"The simple effect is that the statute is a bar to a suit upon the decree."

Then, if this is a suit upon the decree, it is barred.

And we see at once the reason of filing and holding this bill, ostensibly as a defense to Walker's cross-bill, slipping in this decree as a defense to it, and then recovering on the original bill as not affected by the supplemental bill. That is, the complainant files a cross-bill to a cross-bill instead of amending his original bill, either directly or by way of supplement.

In the case I have cited the very question was before the court that is here, viz: Which of the Statute of Limitations, upon a note merged in judgment, controls? and it was held then that the statute that controlled was the one applicable to the judgment and not the one to the note. Now in the case at bar which statute does apply? We have got the very case mentioned in the case cited but a different application of the law; and if this suit has become a suit upon the decree and not one upon the notes then it is barred.

"The collaterals may be held until the indebtedness is paid according to the terms of the pledge."

But has the decree affected the terms of the pledge? Has it changed them? When the original bill was filed by the bank against Walker the indebtedness they were held for was what Samuel J. Walker in fact owed the bank, after an account of his payments had been had. It was not the face of the notes, and that indebtedness was liable to be barred by the running of the statute as to notes as evidence of debt.

Sec. 16, Chap. 83, Rev. Stat. of Ill.: "Actions on bonds, promissory notes, bills of exchange, written leases, written contracts, or other evidences of indebtedness in writing, shall be commenced within ten years next after the cause of action accrued, but if any payment or new promise to pay shall have been made, in writing, on any bond, note, bill, lease, contract or other written evidence of indebtedness, within or after said period of ten years, then an action may be commenced thereon at any time within ten years after the time of such payment or promise to pay."

The decree changed the terms of the pledge by making the debt liable to be barred by the running of the statute as to decrees as evidence of debt.

Sec. 25 (§ 3), Chapter 83, R. S. Ill.: "Judgments in any court of record in this State may be revived by *scire facias* or an action of debt may be brought thereon within twenty years next after the date of such judgment, and not after."

And as to the assignee in bankruptcy, the Statute of United States, § 5057:

"We do not consider that there has been any new suit brought upon the decree, but that there is under the supplemental bill, but assertion of the right to claim the benefit of the Wilshire decree as *res adjudicata*, and that the Statute of Limitations is not a bar to that right."

If the court is in error here in this premise thus laid down, then the conclusion it arrived at must be erroneous also

This supplemental bill sets out the filing of the original bill, and that the cause is pending on the original bill and the issues made under it and the answer to it. It sets out the proceedings in the Wilshire decree, resulting in a decree in favor of the bank, on the 26th Feb'y, 1878, for $172,474, and then says, "that the relief prayed for in the bill of your orator in this cause, is for the same matters and to the same extent as was prayed for in the cross-bill" in the Wilshire suit above referred to.

"And your orator alleges that the amount so ascertained to be due unto your orator in the said case of Wilshire, impleaded, etc., is the amount due your orator *upon the notes set up in his original bill* in this cause, and is the amount to *which it is entitled*, with interest at six per cent. per annum from January 15, 1878."

Now, so far, the facts set forth the allegation based on those facts, and the prayer for relief in this supplemental bill is supplementary to, modifying the charges and the relief prayed for in the original bill; consequently the assertion in the opinion that there has been no "new suit brought upon the decree," if this court is to take the record before it, is shown not to be so by the allegations in this supplemental bill, touching the matters involved in the original bill praying for different relief, based on new facts occurring since the original bill was filed.

What follows after what I have just quoted from this supplemental bill is for the purpose of putting this Wilshire decree in as a bar to Walker's cross-bill; but take the allegations I have quoted from it and the relief the party is entitled to upon those allegations, and one part of this supplemental bill has reference to and affects the case as made by the original bill, which is legitimate, while the other part and the only part that the Supreme Court of Illinois in its opinion gives any prominence to, has reference to the cross-bill of Walker, a paper of not the slightest consequence whether in the case or out of it. Using this supplemental bill of the bank as a cross-bill to the cross-bill of S. J. Walker, its effect on the original bill is concealed from view and it is considered merely as a defense to Walker's cross-bill and not as entitling the party to relief upon it.

II.

The right of the assignee in bankruptcy, as such, and representing the creditors of the bankrupt, to inquire into the consideration of every claim presented against him as such, is denied by the Supreme Court of Illinois.

"It is next asserted that the Wilshire decree is erroneous inequitable and unjust on its face, and, under the circumstances of the case, one to which the Circuit Court should not have given effect.

"There was error in the Wilshire decree. There was the same erroneous order of reference in that case directing the master not to consider the question of payments of usurious

interest that there had been in this case, and for the same error on account of which the first final decree in this case of April 25, 1878, was reversed by this court, the decree in the Wilshire case was subject to be reversed, but it never was reversed.

"The rule of *res adjudicata* or estoppel by a judgment upon the same point, where there is no want of jurisdiction, has operation whether the judgment be erroneous or not.

Graceland Cem. Co. v. *The People*, 92 Ill. 619.
Case v. *Beauregard*, 101 U. S. 692.

"It is insisted that the principle which was applied in the cases of *Wadhams* v. *Gay*, 73 Ill. 415, and *Gay* v. *Parpart*, 106 U. S. 699, as to a court of equity declining to interfere to supply aid for the enforcement of an unjust and inequitable decree, should obtain here in appellant's favor. The principle there acted on was, that where there was an incomplete decree, which was ineffective for want of the provision of any means for its execution, and a court of equity was called upon by an original bill to supply the omission so as to render the decree effective, that the court might well remain passive and refuse its interposition where the decree was unjust and inequitable. *Here the Wilshire decree is complete of itself, entirely capable of full execution.* Nothing is sought with respect to it except to show its existence as a decree, and insist upon the legal effect which attaches to its existence as a decree. We do not regard the case as at all coming within the principle referred to.

"There were pending at the same time some nine of these so-called Walker suits, including the present and the Wilshire suit, some brought by the International Bank, and in those brought by others the bank filed cross-bills, in which, as between Samuel J. Walker—he being a party defendant in all of the suits to the bills or cross-bills of the bank—and the International Bank, a complainant in bills or cross-bills in all of them, where precisely the same questions were involved touching the same identical notes given in the course and springing out of the moneyed dealings between them, and where the principal question in each of them was, did Walker, by reason of those moneyed dealings, owe the bank anything, and if so, how much; usury in these dealings being the defense set up by Walker in all the suits."

We claim that the taking of eight decrees for identically the same causes of action, was a legal fraud. That being in a court of equity, the assignee may, in defending against a claim, seize upon any equitable circumstances which would

be available to any suitor in defending against the claim. That the injustice of this decree is manifest on the face of the record and is conceded by the court, and that a recovery upon it in a new suit in a court of equity is in violation of well known principles of equity jurisprudence of which the assignee, as such, had the right to avail himself of in his defense.

This case is clearly within the rule laid down in *Wadhams* v. *Gay*, 73 Ill. 415, where it is said, p. 430: "Upon all the facts shown in this case, the court would not originally have made a decree like this one. There is authority for the doctrine that the court may, on a bill to carry a decree into execution, look into the case to see if it will make the same decree a second time.

"In such a case it is said it is competent for the court, in respect of the special application, to examine the decree, and if it be unjust, to refuse enforcement." Adams Eq. 416.

Daniel in 2 Dan. Ch. Pr. 1614 (1586), citing *Lawrence* v. *Benney*, 2 Ch. Rep. (127), on this point says: "It is laid down that although where a decree is capable of being executed by the ordinary process and powers of the court, whatever the inequity of the decree may be, yet, till it is reversed, the court is bound to assist it with the utmost process the course of the court will bear. But where the common process of the court will not serve, and things come to be in such a state and condition after a decree made that it requires an original bill, and a second decree upon that, before the first decree can be executed—if the first decree is unjust—then this court desires to be excused in making it its own act, and to build upon such foundations, and charging its own conscience with promoting an apparent injustice, and this obliges the court to examine the grounds of the first decree before it makes the same decree again."

Hamilton v. *Houghton*, 2 Bligh (H. of L.), 169, 193: "It is clear that the decree was erroneous in every respect; it was erroneous, unquestionably, in decreeing the party to that deed entitled to that which it then gave him; it was erroneous in decreeing that he was entitled to anything, without giving the same benefit to other creditors entitled under the trust; it was erroneous in proceeding to a sale without having the surviving trustee before the court; and therefore it is a decree which the court can never carry into execution. *The party who comes into a court of equity to have the benefit of*

a former decree, must show that it was a right decree; if the decree appears to be erroneous, the court can not carry it into execution."

It will be seen on looking into the facts of this case in Bligh, p. 175, that it is, *just like the case at bar*, a proceeding for an accounting based upon a decree which upon its face showed that interest had been charged where it ought not to have been, and correcting that matter was the substantial relief granted by the court in the course it took with it.

Attorney General v. *Day* 1 Ves. Sr. 218, *syllabus:* "The court refused to effectuate an order confirming the Master's report, for laying out money in land for a charity, where the nature of a devise on which it was founded made an opening to evade the statute of mortmain."

West v. *Skip*, 1 Ves. Sr. 239, 245: "The only difficulty objected is that on a bill to carry a former decree into execution, the court can only do that and not vary, and the general rule is so. But there are several instances wherein the court has considered the directions, and whether there was any mistake; as has been done by Lord Cowper, *to attain the justice of the case*, and may be done here especially as between new parties."

O'Connel v. *McNamara*, 3 Drury & Warren, Sugden's Decisions, 411–412. The Lord CHANCELLOR: "I do not understand the rule to be that this court is bound to carry into execution an erroneous decree; on the contrary, I apprehend that where a party comes into this court, asking for the benefit of a former decree, he must be prepared to show, if the case requires it, that such decree was right. In *Hamilton* v. *Houghton*, the error lay in the original decree of 1780; the appeal in that case, however, was only against the decree which carried that original decree into execution, but there was no appeal from the original decree itself. Lord Eldon, in moving judgment, observed, 'that the original decree appeared to be one, the benefit of which could not be had in that suit,' and he concluded by saying that, 'under the circumstances of this case, it appears to me that we can do no more than displace all those decrees with liberty to the party to go before the court again and amend these pleadings, if he shall be so advised;' and accordingly the cause was remitted back to the Court of Exchequer, with an order to that effect. It is true that as this case now comes before the court I can not order the decree to be amended, but as I am not bound to carry on or perpetuate

error, I will not give the plaintiff the benefit of the former proceedings, unless he consents to take the proper decree."

In that case the matter complained of was just as in this, the improper allowance of interest in an account.

Bean v. *Smith*, 2 Mason, C. C., 252–299; "The only further point, on which I have paused, has been as to the extent of the plaintiff's demand. It originated in Farmer's Exchange bills, which, at the time of the giving of the drafts, on which the plaintiff's judgment is founded, were at a great discount. At law I am aware that the plaintiff might be entitled to the full amount of his judgment notwithstanding any purchase of this sort. But I think a court of equity has a right to moderate his claim; and if he asks equity to compel him to do equity. All that in conscience he ought to claim under all the circumstances against Simon Smith, is the value of the bills of the bank at the time he received them or bought them, with interest from that time to the present. I shall, therefore, direct an inquiry to be had before the master for this purpose."

Lawrence v. *Berney*, (29 Car. 2,) 2 Reports in Chancery, 127: "This case is on a bill of review. This court declared they would not make error by construction, and where a decree is capable of being executed by the ordinary process and forms of the court, and where things come to be in such a state and condition after a decree made, that it requires an original bill and a second decree upon that before the first decree can be executed. In the first case, whatever the iniquity of the first decree may be, yet, till it be reversed, the court is bound to assist it with the utmost process the course of the court will bear; for in all this the conscience of the present judge is not concerned, because it is not his act, but rather his sufferance, that the act of his predecessor should have its due effect by ordinary forms. But when the common process of the court will not serve, but a new bill and a new decree is become necessary to have the execution of a former decree, is in itself unjust; there this court desired to be excused in making it its own act, to build upon such ill foundations, and charging its own conscience with promoting an apparent injustice, and to this condition hath the plaintiff, *Lawrence*, brought himself, for he forebore to apply himself to this court to support him, as one that claimed under the decree in 1650, or to pray an injunction to stop *Berney's* proceeding at law, but staved till *Berney* had recovered the land by a trial at bar, and been put into possession by the sheriff; and now no ordinary process upon the first decree

will serve, but he is drawn to a new bill to pray execution of the first decree, by a second decree; and this obligeth the court to examine the grounds of the first decree before they make the same decree over again. And this court was not of this opinion alone; but it was also the opinion of others that were before him, who had made several precedents in like cases, and would not enter further into requirements of the errors.

"*Lawrence's* bill was an original bill to execute two decrees in 1650 and 1651, and the defendant *Berney*, now also plaintiff, it being cross causes, brought his bill of review to reverse the said decree, etc., as unjust and erroneous; that the first decree by the Lord Coventry, in 30 Car. 1, decreed a sale of the premises for a performance of the trust; that in 1650 a decree was made to frustrate the Lord Coventry's decree."

Johnson v. *Northey*, Finch's Precedents, 134, A. D. 1700, a bill to enforce a decree; held to have opened it for trial upon the merits.

In *Gay* v. *Parpart*, 106 U. S. 679, this case of *Wadhams* v. *Gay* was referred to by this court, and the conclusions of the court as to the right of a court to look into a decree upon bill filed to execute it, affirmed by this court, p. 699.

The case at bar presents stronger grounds for the refusal of the relief prayed for by the bank in this case, than in any of the cases cited, for it was asking the Circuit Court to take its judgment and decree as superior to the judgment and decree of the Supreme Court of Illinois, and render again the very judgment which that Court had reversed.

The Supreme Court of Illinois in its decision (A. R. 6) says: "Here the Wilshire decree is complete of itself, entirely capable of full execution. Nothing is sought with respect to it except to show its existence as a decree and insist upon the legal effect which attaches to its existence as a decree."

A decree in chancery is, I suppose, controlled in its execution by the scope of the bill filed in it. That it affects no subject-matter beyond what clearly appears on the face of the record. An apt illustration of that is the rulings of the Supreme Court of Illinois in this opinion touching what is called the Brennock suit and decree.

The Wilshire suit and decree was, by the pleadings in it set out and relied on here, confined exclusively to the Frey note and the collateral pledged to secure it. The bank in its cross-bill in that suit set up the indebtedness due it from

Walker, and prayed that the surplus after paying Frey should be paid over to it to apply on what was due it on all its notes, but not one word is said in it about the other collaterals or any relief prayed touching them or any relief granted, so that the case made upon bill, answer and decree, controlled as to the amount due from Walker to the bank as to that surplus; but under that decree as it stands no process known to the law could be issued by which the collaterals involved in this suit could be held, or charged, or applied to the payment of that decree.

"When a decree is capable of being executed by the ordinary process and powers of the court, whatever the inequity of the decree may be, yet, till it is reversed, the court is bound to assist it with the utmost process the course of the court will bear." Citing, 2 Dan. Chy. Pr. 1614 (1586); citing, *Lawrence* v. *Benney*, 2 Ch. R. 127.

But what process of the court on that Wilshire decree would reach the collaterals involved in this suit? Absolutely none whatever.

The only mode of reaching them was and is to file an original bill, based on that decree and praying that those collaterals be sold to satisfy it. That relief they could not have because the statute of the United States bars it, and the mode in which this case is decided deprives the party of the relief he is entitled to under that statute.

The debt is the *principal*, the mortgage or the pledge of collaterals is the *incident*. In both of these cases, that is, the case at bar and in the cross-bill of the bank in the Wilshire case, the debt was the principal, touching which relief was prayed, and without the existence of which no relief could be granted as to the collaterals. It was competent for the bank in the Wilshire case to have set out all of its evidences of debt and all of its collaterals to secure that debt, and prayed for and obtained relief accordingly. It failed to do so. It saw fit to set out only part of its case and to take only part of the relief it was entitled to had its case been fully stated. It had its debt ascertained, the principal, without which no decree could be rendered in either of the cases, but did not obtain any disposition of its collaterals to secure that debt, other than of the one mentioned in the bill. It now seeks to remedy that defect by the supplemental bill filed in this case. If it does not effect that and only dismisses from the record the useless lumber—Walker's cross-bill, of what avail was it to file it? Is not its effect to

sell the collaterals to satisfy the debt found due by that decree which in that decree were not provided for?

Now, touching these collaterals, is there not "an incomplete decree" "ineffective for want of any means for its execution," and, is not "a court of equity called upon by" a bill in the nature of "an original bill to supply the omission so as to render the decree effective," and, is not the Wilshire decree unjust and inequitable? How then can the court do otherwise than "remain passive and refuse its interposition."

The bank saw fit to split its cause of action, distribute it round among ten different suits claiming under blanket agreements which gave it the right in one suit to litigate and dispose of its equities as to all the debt Walker owed it. It did the inequitable and unjust act of making him try ten suits, takes decrees in eight of them confessedly inequitable and unjust; should not a court of equity "desire to be excused in making it its own act, and to build upon such foundations, and charging its own conscience with promoting an apparent injustice" and "oblige the court to examine the grounds of the first decree before it makes the same decree again."

The mere production of the record in the Wilshire case proved nothing as to the collaterals involved in this case.

The change in the cross-bill after setting out twenty-two principal notes is: "That said notes are due and payable and that complainant is entitled to the benefit of said collateral security (referring to the Badger note for $4,500 and the trust deed with it) after the same shall cease to be a security for the said promissory note so owned and held by said Frey" and the prayer is "that said premises be sold and the proceeds applied to satisfaction of indebtedness due complainant and in extinguishment of collateral note secured by said trust deed."

Now it was necessary to go behind this record in order to show that the principal notes involved in it are the same notes that are involved in the case at bar. Does the assignee in bankruptcy stand in a different position from what Walker does? If the decree is a fraud in law then he has the same rights, but if this decree is a mere evidence of indebtedness, which, in the interest of the creditors at large whom he represents, he has a right to treat as only *prima facie* evidence of indebtedness, then the principle of law I have quoted from Daniel Chy. Prac. may be relied

upon by him, and in that view of it, it becomes a federal question and this court has jurisdiction of it.

The taking of eight independent decrees for the same identical causes of action was a fraud in law. A court of equity would, at any time, on bill filed by Walker, or his assignee in bankruptcy, after he was appointed, have enjoined the attempt if made to enforce more than one of them. They could, in apt time, either file a bill of review or sue out a writ of error to reverse all of these decrees for the error conceded by the Supreme Court in the last paragraph of the above quotation to be on the face of the record, or they could wait until they were attacked and then plead the fraud in law which, to the attempt to collect more than one of them, could successfully have been maintained at any time. The assignee did reverse two of these cases including the principal one, this case, for the error on the face of it. He did not attempt to set aside all the others on the ground of fraud—in law in taking them—upon bill filed for that purpose. But he is now attacked with one of them; can he not confess and avoid for this fraud in law? He is in a court of equity and in the very court that rendered all these decrees obnoxious, except as to the one in this, the principal case, to the charge of fraud in law why should he not be at liberty to confess and avoid for fraud when the court would on bill filed avoid the decree upon which he is attacked for the very fraud he sets up in his plea of avoidance?

So far as Walker's assignee in bankruptcy is concerned, these eight decrees for the same causes of action were as to him as assignee in bankruptcy representing the creditors of Walker clearly fraudulent in law, and he, as such assignee, has the right under the bankrupt law to insist upon that fraud. Two of them were taken on the 28th of February, 1878, less than two months before Walker went into bankruptcy, the 26th of April, 1878; and the other six the 25th day of April, 1878, the day before.

Under the circumstances of this case all that the assignee asks is to have the account of the indebtedness to S. J. Walker taken as though the decree in the Wilshire case had never been rendered. That is eminently fair.

W. T. BURGESS,
Attorney for Plaintiff.

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IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1887.

No. 254.

ROBERT E. JENKINS, ASSIGNEE IN BANKRUPTCY OF SAMUEL J. WALKER,
Plaintiff in Error,
vs.
THE INTERNATIONAL BANK OF CHICAGO ET AL.,
Defendants in Error.

In Error to the Supreme Court of the State of Illinois.

ARGUMENT FOR DEFENDANTS IN ERROR.

SMITH & PENCE,
FOR DEFENDANTS IN ERROR.

BARNARD & GUNTHORP, LAW PRINTERS, 44 & 46 LASALLE ST., CHICAGO

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STATEMENT.

It seems to us that counsel for plaintiff in error has complicated this case by his statement. The question or questions involved are not complicated, as a plain statement will show. The best and clearest possible statement has been made by the Supreme court of Illinois, and which precedes the opinion of that court in this case found published in 111 Illinois, 462. That statement is as follows:

A bill in chancery was filed February 17, 1875, in the Cook county Illinois Circuit court, by the International Bank against Samuel J. Walker and other persons to

foreclose and sell certain collateral securities which had been pledged by Walker to the bank to secure the payment of principal notes of various dates made by Walker to the bank, some twenty-two of which were still held by it, and about ten others transferred to the other parties to this suit. The prayer of the bill was, that a decree might be entered fixing and establishing the amount of indebtedness due the bank from Walker, and for a sale of the collaterals so pledged, and the application of the proceeds to the payment of such indebtdness. Walker answered, alleging that a large amount of usurious interest entered into and formed a part of the alleged indebtedness, and insisting that an account be taken between the parties, and that such usurious interest be applied toward the satisfaction of such indebtedness, and that the collaterals be surrendered. Walker also filed a cross-bill making the same allegations, and praying for an account, and the application of such usurious interest, and for a surrender of the collaterals.

July 6, 1887, the Circuit court made an interlocutory decree in the cause, which denied the right to interpose the defense of usury, and directed an account to be taken of what was due on the principal notes held by the bank, excluding the defense of usury and of usurious payments of interest. In pursuance of an account taken as thus directed, dated January 15, 1878, a final decree was entered on April 25, 1878, finding the amount due the bank from Walker on the notes held by it to be, on January 15, 1878, $172,474, and directing a sale of the collaterals held by the bank to satisfy it. April 26, 1878, Walker went into bankruptcy, and July 31, 1878, Jenkins, the appellant, received the deed as his assignee in bankruptcy. The decree of April 25, 1878, was by this court, at its March

term, 1881, in *Jenkins* v. *International Bank et al*, 97 Ill., 568, reversed on the ground that the direction to the master, in the order of reference, not to consider the question of usurious payments of interest upon any of the notes, was erroneous. The collaterals so sought to be sold had been specifically pledged by Walker to the bank, each to secure a particular note. The bank also held an agreement from Walker that each of the collaterals, though specifically pledged as security for a specific principal note, should also, after the satisfaction of such principal note, be held as security for Walker's entire indebtedness to the bank, if any surplus remained which could be so applied after the satisfaction of such particular note.

On March 11, 1874, George Wilshire and others filed their bill of complaint against the International Bank, David Frey, Samuel J. Walker and others, alleging that they had purchased of Walker certain premises, and setting out that Frey claimed to own a certain mortgage upon the same, executed by Walker prior to their purchase, which Frey obtained from the bank, but that there was nothing due upon it, and praying that the same might be surrendered and cancelled. Frey filed a cross-bill, setting up his principal note and the collateral note and security so executed by Walker to the bank, alleging that he had bought said principal note of the bank for full value, and praying for the foreclosure of the mortgage and sale of the premises. The bank also filed its cross-bill against Wilshire, Frey, Walker and others, setting up its general collateral agreement above referred to, alleging its right, by virtue thereof, to any surplus that might remain after the satisfaction of the indebtedness so due to Frey on said principal note which had been sold

by it to Frey, not exceeding the amount due on the collateral note. The said general collateral agreement provided that the bank should have the benefit of said surplus, though it had sold such principal note to a third party. The bank in its cross-bill, set up its entire indebtedness so due to it from Walker in the same way and with the same particularity that it had set up the same in the bill in this cause now under consideration, alleging that the notes were due and payable, and asking that it might have any surplus applied to the payment of such indebtedness after the satisfaction of the amount due to Frey. Walker answered that cross-bill in the same way, and alleging the same facts that he had alleged in answer to the bill in this cause. He also filed a cross-bill therein, setting up the same facts that he had set up in the cross-bill filed in this cause, and prayed for an account between himself and the bank, and for the application of all usurious interest in satisfaction of his indebtedness to the bank, and for a return of the bank's collaterals, just as he had done in this case by his cross-bill.

On February 28, 1878, a decree was entered in the Wilshire suit, finding the amount due from walker to the bank to be the sum of $172,474. That decree stands in full force and effect, and over five years have elapsed since the entry of the same. The case at bar having been re-decketed in the circuit court after the reversal of the first decree, on November 26, 1883, by leave of court the complainant, the International Bank, filed a supplemental bill, setting up the said proceedings, pleadings and decree in the Wilshire suit as a former adjudication, and in bar to any further proceedings by Jenkins, assignee, for an account under his cross-bill herein, and as a conclusive adjudication of the amount due the bank upon the

evidenee of indebtedness set out in its original bill herein The circuit court held the said former adjudication in the Wilshire suit a bar to any further account as to what was then due, and found the amount due upon the principal notes set out in the bill and offered in evidence, to be the sum of $172,474 on January 15, 1878, as determined by the decree in the Wilshire suit. After the allowance of subsequent collections, the court found the amount due at the time of the decree to be $143,630.22, and rendered a decree for a sale of the collateral securities to satisfy said sum. This decree was affirmed by the Appellate court of the first district, and the assignee appealed to the Supreme court of the state where the decree was also affirmed and the assignee now prosecutes a writ of error out of this court to the Supreme court of Illinois.

The assignee in bankruptcy interposed as a defense in the court below and now insists that he was entitled to have an account of the usurious interest taken by the bank, if any, and have the same applied in reduction of its indebtedness, and also insists that the proceedings and decree in the *Wilshire* case are not a bar to such accounting for the reason that section 5,057 of the revised statute of the United States, known as the bankruptcy limitation law, is a bar to the assertion of said Wilshire decree, as *res judicata*, so far as the accounting is concerned.

The decision of the Supreme court of Illinois is so complete an answer to the position of counsel that it seems a useless waste of the time of the court to do more than refer to that decision.

ARGUMENT.

I.

"No suit, either at law or in equity, shall be maintain-
" able in any court between the assignee in bankruptcy
" and a person claiming an adverse interest touching any
" property or rights of property, etc., unless brought
" within two years," etc.

Rev. Stat. of U. S., Sec. 5,057.

This foreclosure proceeding was commenced February 17, 1875, and S. J. Walker was a party defendant, and had filed his cross-bill for an accounting. Afterwards he went into bankruptcy, and his assignee received his deed of assignment on July 31, 1878, and made himself party to the proceeding in lieu of the bankrupt soon thereafter. After the assignee had made himself a party the cause of action remained the same, and was prosecuted to a final decree in 1884.

The defense of usury had been interposed by Walker and was asserted by Mr. Jenkins his assignee, both in his answer to the original bill and by way of cross-bill, the cross-bill being nothing more than a method of defense, the same fact being asserted both in answer and in cross-bill, an accounting and application or deduction of such usurious interest being asked for.

In the *Wilshire* case the same issues precisely had been raised and determined, and the account between the bank and Walker had been stated.

The defense of usury was an affirmative defense and the burden of proving same was upon the defendant, the assignee in bankruptcy. The defendant tendered this

issue first by the allegations of his answer and second by his cross-bill, and hence the complainant was put upon the defense as to such issue. There may be and usually there are several issues of fact in every case, and the burden shifts as to such issues according as they are tendered by complainant or defendant.

In this case the issue of usury was tendered by defendant. If the defense of *res judicata* had arisen before the commencement of the suit it could have been asserted in our answer to the cross-bill and also have been anticipated by setting up such adjudication in our original bill. But having arisen subsequently to the commencement of this suit, the way to assert such defense was by supplemental bill.

Story Eq. Pl., § 393.

Jenkins v. *Int. Nat. Bank*, 111 Ill., 470.

The supplemental bill was in the nature of a plea in bar to any further accounting in this suit, which issue had been tendered by the defendant and was in no sense the assertion of a new cause of action.

No new suit has been brought. Complainant's cause of action has not been changed. The object of the original bill was to ascertain the amount of indebtedness due, and for an order of sale of collaterals to satisfy same. After filing the supplemental bill, the cause of action was the same, viz: the ascertainment of the amount of the indebtedness due and a sale of collaterals. And hence, there being no new cause of action, there can be no assertion of a plea of limitation, which did not exist when the suit was commenced.

The question arose in *Bank* v. *Sherman*, 101 U. S., 403, as to the date when the proceedings in bankruptcy

were commenced. The original petition filed was insufficient, and subsequently an amendment was made, asserting another cause of bankruptcy, and the adjudication was had for such cause. Before such amendment, however, the bankrupt had disposed of certain property, and the question arose as to the title of the assignee. If his title related back to the original filing of the petition, then the title was in the assignee. If it related back only to the time of the amendment, then the title was in the bank.

This court held in that case that although the adjudication was upon the act of bankruptcy, set out in the amendment, yet that the question to be decided was the question of bankruptcy, and that the act set out in the amendment was only the evidence of the bankruptcy, and that the suit, to have the party declared a bankrupt, had been commenced, and that the cause of action, viz: that of bankruptcy, or no bankruptcy, was pending as of the date of filing the original petition.

So here, the cause of action was pending ever since February 17, 1875, the date of the commencement of the suit, which was before the date of the adjudication in bankruptcy. And any amendment or supplement, introducing new evidence of the amount of the indebtedness, was not the beginning of a new suit—was not the introduction of a new subject-matter. It was simply a new defense by complainant to the issue of usury tendered by the defense. It was in the nature of a plea *puis darrien continuance*—or rather at law it would have been a replication *puis darrien continuance*—to the affirmative plea of usury.

How can it be claimed that such a replication was the assertion of a new cause of action or the introduction of a new subject-matter? The indebtedness of Walker to

the bank and the security therefor was the cause of action —was the subject-matter. Everything else is simple defense or method of avoiding the defense. This statute of limitations cannot be invoked to prevent a defense which party may possess to any issue tendered to him by a party invoking such statute of limitations.

Suppose this state of facts had existed. Suppose the decree in the Wilshire case had recognized and allowed the usurious interest claimed. And then we had proposed in this suit to proceed as if there had been no such adjudication, and claim the full amount due irrespective of such usurious interest. And suppose the assignee had set up as a defense to us, the adjudication in the Wilshire case as a bar to any such claim on our part—could the complainant have asserted as against the assignee, this statute of limitations? No, and for the reason that it would not be a suit or action on the part of such assignee, to assert such adjudication as a bar of further accounting. So on our part the assertion of such a bar to further accounting is not a suit or action. *Estoppels must be mutual.* And if such an adjudication would be a bar when set up by the assignee, so it is a bar when asserted by complainant.

Had the defense to this suit been payment instead of usury, and after the commencement of this suit had the the parties agreed upon the amount due and stated the account between them in writing, could not such statement be pleaded in bar, or introduced in evidence, as a bar to any further accounting. No one would claim that such a plea of a stated account would be the introduction of a new cause of action, so as to permit the plea of this statute of limitation thereto.

Or if instead of an agreed statement of account where the defense was payment, suppose another suit had been carried to a final decree, involving the same issues, and then suppose such final decree were pleaded or offered in evidence as a bar to any further accounting on this suit, would any one claim that such a plea would be the introduction of a new cause of action, so as to permit this plea of the statute of limitation.

There is no difference whatever in principle. It is simply a change in the character of the evidence in support of the original cause of action. It is not the bringing of a new suit so as to permit the plea of limitation. We do not ask any relief upon the basis of such former decree. We simply prove that decree as a fact from which certain legal results flow. Nothing is sought in respect to it except to show its existence as a decree, and insist upon the legal effect which attaches to its existence as a decree. We do not take judgment upon that decree. The decree in the *Wilshire* case was used as a bar to any further accounting, it was used as a defense, and the notes set out in the bill in this case were introduced in evidence, and the amount due upon their face produces the amount of the decree in this case after allowing payments made subsequent to that decree. (Rec. 131.)

II.

The decision of the state Supreme court upon the application of the statute of limitation, Rev. Stat., § 5,057, being correct, then it follows that this court will not look into any other question in the record, but will affirm the judgment of the state court.

Murdock v. *City of Memphis*, 20 Wall. 590.

This court cannot examine any other qnestion in the record, or pass upon the points decided by the State court, which do not involve a federal question, in case the federal question directly involved, is decided against the plaintiff in error. Hence the attempt of counsel to re-discuss the right of a court to review a former decree in a collateral proceeding, is entirely wide of the mark. This court cannot consider such question, when it affirms the decision of the State court upon the federal question.

Respectfully submitted,

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